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HOLISTIC SERVICE DELIVERY FOR DOMESTIC VIOLENCE IN ONTARIO

by

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and

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Submitted to the

**Criminal Justice Review Committee
Ministry of the Attorney General**

April 9, 1998

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April 9, 1998

Murray Segal
Acting Assistant Deputy Attorney General - Criminal
Co-Chair, Criminal Justice Review Committee
c/o Lorna Bolton
720 Bay Street
9th Floor
Toronto ON M5G 2K1

Dear Mr. Segal:

In response to your request in your letter of February 17, 1998, we enclose "Holistic Service Delivery for Domestic Violence in Ontario".

Yours very truly,

Willson A. McTavish
The Children's Lawyer

Gloria Nwabuogu

Encl.

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INTRODUCTION

The Criminal Justice Review Committee advises that it will develop recommendations on "how to achieve a fair yet simpler, more efficient, more effective and less costly criminal justice process in Ontario". The Committee is asking for practical solutions.

We believe that this second stage of analysis by the Committee, (the first being the *Martin Report*), should concentrate upon the Crown charge screening process. What is needed is an alternative system when there is insufficient evidence to obtain a conviction in a domestic violence case and it is not in the public interest to proceed in criminal court.

We define "domestic violence" to mean all offences at law including primarily, physical, sexual and emotional abuse, or, assault and battery within a family. In short, the accused is known to the victim in some form of a familial, trusting relationship, and, to be clear, our definition includes spousal abuse and child abuse.

It is hoped that the Committee will have sufficient resources and access to case information so that the magnitude of domestic violence is identified in the number of cases investigated, the number of charges laid and the rates of withdrawal and conviction. We believe that there are a number of domestic violence cases which do not meet the Crown charge screening process. We also believe that there are a significant number of cases withdrawn at some stage by the Crown and, finally, that some of the cases proceed to trial when they should not proceed at all.

We hope the Committee will be convinced by us to recommend to the Attorney General a new approach to domestic violence cases. This should significantly reduce the number of cases in the criminal justice system. However, the alternative approach recommended by us will increase the caseload in the family law justice system which, on the creation of the unified family court in all of Ontario, will be better suited through civil remedies and allied resources connected to the court to deal with a most difficult and vexatious problem in the legal system - domestic violence cases which do not meet the Crown's charge screening threshold.

Toronto, April 9, 1998

The Authors



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FOREWORD

THREE DAYS IN MARCH AND ONE DAY IN APRIL 1998



On March 25, 1998 in Toronto, the Honourable Mr. Justice David Humphrey said:

Before leaving this case I wish to put on the record my grave concerns that perhaps for the second time the complainant has been victimized. Any experienced counsel would know that the Crown had no chance of a conviction in this case. It is simply too dangerous to convict on the unsupported evidence of a young child describing an event that took place years ago.

The child, as I have said, is a delightful child. She is bright, articulate, charming and, as I have said, probably telling the truth. But why is she put through this ordeal? It is not the Crown's fault. For any other type of charge he is expected to withdraw the charge if there is no realistic expectation of obtaining a conviction, but not on a sexual assault of a young girl. Technically he has the right, but as a practical matter he does not. If he withdrew the charge, the child victim, the parents, the therapist or the social worker might complain to the Attorney General. It would take more time, effort and anguish to respond than it would to consent to a re-election and the processing of the case.

Every one wants to be politically correct. We are out to protect the child. Nonsense, I say. The child gives a statement to the police. That statement is given to defence counsel. The child is required to testify at a preliminary hearing. Defence counsel cross-examines the child at length, committing the child to all sorts of piddly details that no child could be expected to remember. Good counsel do it delicately, as counsel in this case has done, but some counsel are aggressive in their cross-examinations. The conviction rate for cases like this is close to zero, and if a conviction is registered, the Court of Appeal, wisely, in my opinion, would not uphold the conviction.

people seeking to vary their family support orders are informed about mediation as a possible alternative to the court system.

"Mediation may be helpful in resolving the problems faced by separated families, and it puts the focus on the children's best interests," said Harnick. "It may also reduce the need for the courts to intervene. Keeping disputes out of court will reduce the emotional price paid by children when their homes break up."

As part of the pilot project, all people seeking to vary a support order, will automatically be referred to an orientation/information session with a court-connected mediator. The pros and cons of mediation will be discussed. Each case will also be assessed individually, as mediation may not be appropriate in cases involving violence, abuse or other kinds of power imbalance between parties. After the information session, clients will be in a better position to decide if they want to proceed with mediation.

Support for the pilot project was expressed by Susan Breau, Co-Chair, Family Law Section, Frontenac County Law Association: "As a family lawyer, I recognize the value of mediation in family law disputes to reduce conflict and the possibility of court action. I support the pilot project because it can resolve support variation applications and reduce the necessity for court action."

Preliminary results are encouraging; in the first quarter of the one-year pilot project started December 1, 1997, 106 cases were presented with orientation sessions. Of this number, 66 per cent decided to proceed with mediation. The pilot project, funded by the Ministry of the Attorney General, is being administered by Family Mediation Kingston (FMK) which has been providing family mediation services to the Kingston community since 1975. The pilot will be evaluated at its conclusion by the Ministry in conjunction with Family Mediation Kingston and the Kingston Family Court.

"We're looking forward to the evaluation results of the mandatory referral to mediation pilot project," said David Middleton, Executive Director, Family Mediation Kingston. The information obtained from the pilot will assist the Ministry in assessing the effectiveness of the mandatory referral approach to family mediation.

"This government is continually developing new family law initiatives that are progressive and respond effectively to the changing needs of Ontario families," said the Attorney General.

said. "Because of fear of, or intimidation by, their abusers, victims are often reluctant to testify in court or recant their initial statements to the police."

Recent statistics in Ottawa for February 1998 indicate that of the 74 domestic assault cases scheduled, 49 were resolved by way of a guilty plea. Three trials were held, resulting in one conviction and two acquittals. The remaining 22 charges were withdrawn. This represents a conviction rate of 68 per cent.

"Domestic violence courts are examples of positive criminal justice reform initiatives," said Steve Sullivan of the Canadian Resource Centre for Victims in Ottawa. "These courts are vigorously prosecuting domestic abuse cases by using hard evidence and providing more support to women victims."

A preliminary evaluation of the Domestic Violence Court Project indicates the percentage of guilty pleas in domestic assault cases has increased from 40 per cent to 50 per cent since January, 1997. At the North York court, guilty pleas have jumped from 30 per cent to 76 per cent. Police, prosecutors, and victim/witness staff believe the models are working because fewer victims are withdrawing from the process and evidence collection has improved.

As the Children's Lawyer for Ontario, we welcome the establishment of domestic violence courts in the criminal justice system. If the "hard evidence" referred to by Mr. Sullivan exists and the collection of it has improved, then the problem described by Justice Humphrey should not exist.

The problem is - what should happen if there is insufficient evidence?



EXECUTIVE SUMMARY OF RECOMMENDATIONS

Domestic Violence is a multi-layered complex problem. To some, it is a social disease.

The criminalization of domestic violence and the recognition of the right to be free of abuse in our "new economy", underlines the adjudicative importance of this legal and social issue in the Rule of Law. In short, this issue is not capable of being "downsized." Rather, an alternative holistic system is needed.

We recommend :

- (1) An alternative Crown attorney civil system be established in the unified family law court of Ontario to deal with domestic violence cases which do not meet the Crown's criminal charge screening threshold;
- (2) The consistent implementation of civil remedies in domestic violence cases instituted in the family law court by the Crown against the aggressor:
 - injunction to remove the aggressor from the matrimonial home
 - supervised access of children with the aggressor
 - imposed assessment of aggressor
 - counselling of aggressor after being found liable on the civil proof, i.e. balance of probabilities
 - damages against aggressor for wrongful conduct at law
 - enforcing payment of damages against aggressor
 - paying damages into court for the direct benefit of the victims
 - reviewing payment out of court by the Children's Lawyer for the direct benefit of child victims

- (3) The Crown diversion to the family law court of domestic violence cases which do not meet the Crown's criminal charge screening threshold, should not proceed when, at the time of diversion:
- a) the complainant and the accused are living together and both agree in writing that the Crown should not proceed because both persons have reconciled their differences, or,
 - b) the material facts upon which the complaint is based occurred more than two years ago.
- (4) The implementation of a unified family law court throughout all of Ontario so that the Crown has an alternative system to institute the civil remedies, and so that the judiciary across Ontario will order consistently the civil remedies needed to eliminate domestic violence.

If these recommendations are implemented, the cycle of violence will diminish. The early, intensive intervention of both criminal and civil remedies is needed. Coordination, education, and communication of information through written protocols and court rules amongst the police, child protection authorities, mental health professionals, lawyers and judges, will engender the confidence of the Crown to divert domestic violence cases when they do not meet the criminal threshold. The evidence gathered in the criminal investigation of a diverted case should be introduced in the family law court and liability should be proven on the balance of probabilities. The judgment of the family law court should reflect civil remedies that are aimed at the behaviour of the aggressor. In this way, justice will be served. Through this process, the victim will be educated and empowered to end the cycle of violence.

(The Authors wish to emphasize that the research, opinions, views and recommendations in this paper are their own. This paper is being distributed to interested stakeholders, including the 350 Office of the Children's Lawyer's Panel of Lawyers and 150 Social Worker Agents across Ontario for their review and comments).

HOLISTIC¹ SERVICE DELIVERY FOR DOMESTIC VIOLENCE IN ONTARIO

I. ISSUE

How should the Ministry of the Attorney General continue to deal with the issue of domestic violence in Ontario?

Domestic violence in Ontario requires the further attention of policymakers, the legal profession, social work services, and the courts. Ontario needs an integrated and comprehensive approach to violence within a family in order to achieve family and social justice.

In many cases, domestic violence is only one part of the jigsaw of the "broken family." Studies² show that where there is domestic violence, there is also a greater likelihood of some form of child abuse, neglect or endangerment, alcohol abuse, substance abuse, and issues of support. Domestic violence cannot be dealt with in isolation of these other family and social issues. Hence, there is a need for a coordinated, multi-disciplinary approach to domestic violence in families.

There is a need for holistic service delivery for domestic violence in the administration of justice for Ontario.³ In addition to the complex and integrated

¹Holistic - treating of the whole person including mental and social factors rather than just the symptoms of a disease. This analogy can be applied to the justice system in Ontario as regards domestic violence. The Concise Oxford Dictionary, Oxford: Clarendon Press, 1990.

²Domestic Abuse studies reviewed in Liz Kelly, "The Interconnectedness of Domestic Violence and Child Abuse: Challenges for Research, Policy and Practice," In Children Living with Domestic Violence: Putting Men's Abuse of Women on the Child Care Agenda, ed. Audrey Mellender and Rebecca Morley. Bournemouth, England: Bourne Press, 1994, at 24 and at 45 to 48; and in Harvey Wallace, Family Violence: Legal, Medical and Social Perspectives, New York: Allyn and Bacon, 1996, at 7 to 20 and at 160; and in R. Morley and Audrey Mellender, "Domestic Violence and Children: What Do We Know From the Research?" and in Wife Abuse and Custody Litigation: The Need for Reform by Dana Cohen for Professor Janet Mosher, Joint Law/Social Work Research Paper. University of Toronto, April 30, 1997.

³The Ministry of the Attorney General's 1997/98 Business Plan states that "...[i]n 1997, [the MAG] will begin discussions with representatives of community-based organizations, the legal profession, academics and the judiciary with a view to addressing family law issues and developing a family justice strategy. The strategy would provide a more integrated and effective approach to family law concerns." Ministry of the Attorney General, Business Plan 1997/98 at 8.

nature of domestic violence cases, there are problems associated with achieving the legal threshold in criminal prosecutions of domestic violence in Ontario's courts. To redress this problem, it is recommended that in certain cases, there be a shift from criminal to civil remedies.

Although the Crown attorney criminal charge screening test appears clear, it seems to be somewhat subjective, and, on occasion, it may be too generous a standard. Therefore, where domestic violence cases do not cross the criminal threshold, some of them should be diverted to the family law process and become an integral part of a comprehensive family conflict management system. To accomplish this, a single unified family law court should be established throughout Ontario.

II. DISCUSSION

1. LEGAL ISSUES AND SOCIAL SIGNIFICANCE OF DOMESTIC VIOLENCE

A Profound Problem

The laws and policies affecting families and children are of profound social significance.⁴ While all areas of law are socially significant, relatively large numbers of Canadians are profoundly and directly affected by this area of legal discussion, say in comparison to bankruptcy or even criminal law.⁵

"There are probably no Canadians who have not been deeply affected by divorce, child abuse, domestic violence or youthful offending behaviour, and our society as a whole is profoundly shaped these concerns."⁶

For the past three decades, in response to societal norms and values, policymakers have criminalized abusive conduct and the courts have taken a more serious approach to domestic violence cases. The legislative and judicial branches of government have addressed domestic violence in a more interventionist and serious manner. As Professor Bala writes:

"... these legal challenges reflect a new, more interventionist attitude towards the family. Abusive conduct might, in the past, have been regarded as a private 'family matter' may now be a subject of state intervention. The increased awareness, understanding and responsiveness to problems of violence within the family are very important developments, and should in the long-term result in a healthier society, especially as society intervenes to try to identify and assist those who have been victims of domestic violence."⁷

⁴While children and the family are of profound societal importance, laws and the legal system are not the only tools of government policy. Indeed in many contexts, social, economic and educational policies are much more significant than legal responses, and in other contexts any government response will have only a limited effect on attitudes and behaviour. However, coordinated legal and social responses which are sensitive to Canadian values and behaviours can have a significant impact. See "The Family: Home Sweet Home", *The Economist*, September 9, 1995 p.25 comparing effective, coordinated European policies to uncoordinated ineffective American efforts to help families and children.

⁵As stated by Justice Abella, "The Law of the Family in the Year of the Family" (1994), 26 *Ottawa L. Rev.* 533:

"... no area of law matters more to more people than family law. Not many people do corporate takeovers, most do not commit crimes, but absolutely everybody has a family This is what makes family law so intense, and the law of the family so immensely interesting."

⁶Professor Nicholas Bala of Queen's University, Kingston, Ontario, "Legal Principles for Families, Children and Youth: A Discussion Paper." (A Discussion Paper prepared for the Department of Justice of Canada), November 5, 1995, at 8.

⁷*Ibid.* at 29.

The Criminalization of Domestic Violence

That said, the criminalization of domestic violence does not itself solve all the issues of domestic violence. It is recognized that:

"... the law can be a very blunt social instrument for dealing with families and children. For example, changing the law to make corporal punishment a criminal offence is unlikely to make people into better parents, or to provide a better life for children. Arguably, however, changing this law might have a symbolic impact, and if combined with substantial educational and parental support efforts, might alter parental behaviour."⁸

The "New Economy" - Freedom from Domestic Violence

Despite the trend towards increased state interventionism in family law, there is the more recent incidence of public administration in the "new economy."⁹ Thus, domestic violence cases must exist in the context of the new economy as well. It is argued that the new economy demands a rationalization of access to formal adjudication.¹⁰ Professor Harry Arthurs, a law professor and former President of York University in Toronto, Ontario, describes a triage for prospective litigants. In the triage, family disputes are ascribed to an intermediate category of claimants who *may* be offered access to adjudication, although, in fact, some may be discouraged from actual litigation by user fees and other deterrents. Further, he places family disputes alongside property or consumer disputes. This is unfortunate because, in our view, domestic violence is a profound personal liberty issue. Professor Arthurs places "personal liberty" issues at the apex of his triage model. Freedom from an assault is one of the most basic of personal liberties. The right not to be assaulted is a fundamental right necessitating access to justice in the new economy. Personal liberty is an important claim as Professor Arthurs argues. Therefore, as first tier claims, domestic violence cases (though not specifically

⁸*Ibid*, at 39 and see for instance *Toronto Star* article, "Child abuse deaths spark major study by Ottawa," August 15, 1997, at A1. The Canadian Foundation for Children, Youth and the Law has initiated a Charter challenge against the spanking of children that would make it illegal for parents to hit their children. The Executive Director Sheena Scott, states that "... children are the only group in society that can be physically assaulted with impunity. Adults need correction as well, but we don't go about hitting them."

⁹In H.W. Arthurs, "'Mechanical Arts and Merchandise' Canadian Public Administration in the New Economy," (1997) 42 *McGill L.J.* 29, at 47-48. One important manifestation of the new economy is the increased legal control of the administration. That is, law as the external force to limit state action and redefine the mandate and modus operandi of public administration. This will likely result in the rationing of access to formal adjudication.

¹⁰*Ibid*, at 47-48.

referred to) should be afforded access to formal adjudication *as of right*. By their very nature, these cases receive curial adjudication, necessitating the serious attention of judges and the Crown. Domestic violence concerning families in crises, therefore, is the most basic access to justice issue facing our society today.

It must be stated that similar to criminal sanction, civil liability and consequent civil remedies can be perceived as a symbolic form of punishment. The payment of damages and civil remedies such as exclusion from the matrimonial home may indeed fulfil a sense of individual and societal justice. Further, civil remedies may act as a deterrent to further criminal behaviour and, in some cases, may improve behavior so that children become the beneficiaries of both their parents' love and attention.

In addition, violence in families may be construed as a significant Charter issue. Section 7 of the *Charter of Rights and Freedoms*¹¹ clearly states that: "[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

2. VIOLENCE AGAINST WOMEN AND CHILDREN (STATISTICS AND IMPACT)

Violence against women and children is unfortunately an all too common occurrence.¹² The prevalence is high, and the impact upon the families and our communities is great. The following statistics give a small sense of the prevalence, nature, and complexity of domestic violence and child abuse in Ontario.

The United Way of Greater Toronto says that¹³:

Women who have experienced violence - and the children who have witnessed

¹¹*Canadian Charter of Rights and Freedoms*, s. 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

¹²Nicholas Bala, "Spousal Abuse and Children of Divorce": A Differentiated Approach (1996) 13 Can. J. Fam. L. 215 at 224.

¹³Metro Toronto: A Community At Risk: United Way of Greater Toronto, July 1997, p.49.

this violence -require access to a full range of social supports to escape their abusers and establish healthy, independent lives. Government funding cuts to social assistance, nonprofit housing, legal aid, counselling services, and child care have created tremendous barriers to women seeking freedom from violence. Recent surveys indicate that more women are staying in abusive situations because of these barriers.¹⁴

According to a 1993 nationwide survey, 29% of all Canadian women who have ever been married or lived in a common-law relationship had been physically or sexually assaulted by their partner on at least one occasion since the age of 16.¹⁵

In 1996, the Assaulted Women's Helpline in Metro received over 18,000 calls from abused or assaulted women.¹⁶ In that same year, Metro police reported 5,330 cases of domestic violence. These cases included murder (3), attempted murder (3), sexual assaults (73), assaults (4,022), harassment, threats and intimidation.¹⁷

Almost two out of three women who were assaulted by their partner had been assaulted on more than one occasion. Thirty-two percent of these women were assaulted on at least 11 occasions, 9% were assaulted between 6-10 times, and 22% were assaulted between 2-5 times.¹⁸

In October 1995, emergency shelters for assaulted women received a 5% cut to funding. In addition, many second-stage supports such as counselling, advocacy, child care, and job search services were reduced, leaving many women without adequate supports to make a new start.

Increasingly, women escape violence only to enter a life of poverty.¹⁹ And, because of restrictions to legal aid, more women are being pressured to enter into mediation with their abusive partners, despite the fact that mediation is inappropriate and even dangerous in situations where violence has been used.²⁰

¹⁴Locked In Left Out, Ontario Association of Interval and Transition Houses, November 1996, p.27.

¹⁵Women in Canada, Statistics Canada, August 1995. Based on the 1993 Statistics Canada The Violence Against Women survey. All figures are nation-wide.

¹⁶Herstory, from the Assaulted Women's Helpline's web site.

¹⁷1995 Statistics: Companion to the 1995 Annual Report, Metropolitan Toronto Police Service, 1995.

¹⁸*Ibid.*

¹⁹Locked In Left Out, Ontario Association of Interval and Transition Houses, November 1996, p.25.

²⁰*Ibid.* p.31.

In 1991, it was estimated that 47,000 reports of maltreatment are investigated by Children's Aid Societies in Ontario each year. An estimated one in five of Ontario's children are maltreated in some way.²¹

In 1996, 24% of the new referrals to the Children's Aid Society of Metropolitan Toronto (Metro CAS) were for reasons of alleged physical and/or sexual abuse. Other reasons for Metro-CAS involvement include family breakdown, inadequate housing, poverty, relationship conflicts, and substance and alcohol abuse.

In both 1995 and 1996, over 1,000 cases of physical abuse and over 500 cases of sexual abuse were investigated by the Metro CAS. Seventy-five percent of the children involved lived at or below the poverty line and 58% of all families served were lone-parents.²²

Fifty-three percent of all victims of sexual assault are children under the age of 18. Twenty-seven percent of all victims of sexual assault are children aged 12-17, and 26% are children aged 0-11.²³

Children with a history of child abuse are more likely to have psychiatric and other health problems, commit crime, drop out of school, or be unemployed.²⁴

Long-Term Impacts of Child Abuse²⁵

- 85% of runaways in Toronto have been sexually abused.
- 80% of female prisoners were victims of childhood physical or sexual abuse.
- 80% of people with eating disorders experienced some form of abuse and/or witnessed violence between parents as a child.
- 33% of sex offenders experienced some form of sexual trauma as children.
- Suicide prevention programs report that children with a history of sexual abuse are 10 times more likely to attempt suicide.
- Children with a history of sexual abuse are seven times more likely to become drug/alcohol dependent.
- Child prostitution prevention programs for ages nine and up report that 99% have a history of child abuse.

²¹Fact Sheets, Ontario Association of Children's Aid Societies.

²²All figures are from 1996 Service Statistics, from the Children's Aid Society of Metropolitan Toronto's web site.

²³1995 Statistics: Companion to the 1995 Annual Report, Metropolitan Toronto Police Service.

²⁴Fact Sheets, Ontario Association of Children's Aid Societies.

²⁵All figures are from Fact Sheets, Ontario Association of Children's Aid Societies.

Professor Nicholas Bala in his full and excellent article, Spousal Abuse And Children of Divorce: A Differentiated Approach, says that:

"One of the most complete studies about abuse of women by their partners was the 1994 Statistics Canada report, with 12,300 women surveyed by telephone.²⁶ Of those women who are or had ever lived in a married or common law relationship with a man, 29% report at least one physical or sexual assault from a partner; one third of those women who were assaulted at some point feared for their lives. Fifteen percent of all women report an assault by a current partner, but for prior relationships the rate was 48%, suggesting that almost half of all women who are separating or divorcing have experienced a spousal assault.

About 20% of women who experienced abuse from a prior partner reported violence during or following separation, and in 35% of these cases the violence increased in severity after separation, but in only 8% of cases of violence did it only begin after separation. Three percent of all women reported a physical assault in the 12 months prior to survey, with the highest rates for women who were younger, less well-educated and had a lower income, though women from all income and age groups reported abuse in the previous 12 months. About one third of those women who reported physical abuse in a relationship indicated more than 10 violent incidents, while one third stated that there had been only one incident. The most common physical abuse reported was a slap, shove, or a threatened strike (which constitutes an assault under Canadian law), but 5% of those women who had been physically abused reported the threat or use of knife or gun.

About one third of all women (17% in a present relationship and 59% in previous relationships) reported serious emotional abuse in a marital relationship (e.g. denial of access to information about family finances, verbal denigration, or an excessively controlling husband). In majority of cases, emotional abuse was accompanied by physical or sexual abuse. Emotional abuse is an important concept, and is used by judges dealing with family law disputes, though it is a nebulous concept, and in contrast to physical and sexual abuse, it is not a criminal offence (unless it involves post-separation harassment).²⁷

The psychological effects of wife assault can be far-reaching. Victims of spousal abuse reported depression, anger, fear, drug and alcohol abuse, guilt and lowered self-esteem. While in general, a woman is more likely to experience drug or alcohol problems if there is both physical and emotional

²⁶Karen Rodgers, "Wife Assault: The Findings of a National Survey" (March, 1994), *Juristat* 14:9 (Ottawa, Statistics Canada). This survey was part of a larger Statistics Canada study of Violence Against Women, discussed in several articles in Vol.37, No. 3 of the *Canadian Journal of Criminology*.

²⁷*Criminal Code of Canada* s. 264, criminal harassment, and s. 372(3), harassing phone calls.

abuse, or if the physical abuse is more severe, for some women even limited acts of physical abuse can create a very intimidating, emotionally destructive environment.

In 39% of all relationships where there was violence, the women reported that children were observers, rising to 61% of those women who were injured; *i.e. a child was more likely to witness more serious violence*. Of those women whose children observed an assault, 60% left their abusive partner, versus only 34% of other women who were assaulted.

The Statistics Canada survey of women reveals a very broad spectrum of abusive conduct, ranging from a substantial number of cases where there was only one - relatively minor - assault over the course of an entire relationship, to situations where there was serious repeated physical and emotional abuse.²⁸

In a separate report by Health and Welfare Canada it was estimated that eighty percent of children who reside in violent homes witness the violence against their parent, and that in one out of three of these families the children are themselves victims of assault.²⁹

²⁸Another 1994 Statistics Canada report, this one on spousal homicide, revealed that women are more than three times as likely to be killed by their spouses than are men, and nine times as likely to be killed by a spouse as by a stranger.

Wilson & Daly, Spousal Homicide, Juristat 14(8) (1994, Ottawa, Statistics Canada); see also Willson, Johnson & Daly, "Lethal and Nonlethal Violence Against Wives" (1995), 37 Can. J. Crim. 305-330).

²⁹Health and Welfare Canada, Wife Abuse: The Impact on Children, 1991 at 3. See also Ontario Child Mortality Task Force Final Report July 1997 at p.5 which states:

Over the two-year period, 100 children receiving services from an Ontario CAS died. Forty-three of the children died in 1994; fifty-seven of the children died in 1995. Fifty children were girls and fifty were boys.

Thirty-one of the children were in care of a Children's Aid Society at the time of their death. Ten children were living with their family subject to court-ordered supervision. Fifty-nine children were living with their family and receiving support services or investigation and assessment services at the time of their death.

CAUSE OF DEATH OF 100 CHILDREN KNOWN TO CAS

Natural Causes	Sudden Infant Death Syndrome	Sudden Unexplained Death	Accidents	Suicide	Homicide	Undetermined	Total
38	14	9*	21	6	11*	1	100

* Please note that one death classified in the Interim Report as a Homicide was in fact a Sudden Unexplained Death

AGE OF CHILD AT TIME OF DEATH

under age 1	age 1-4	age 5-10	age 11-16	age 17-19	Total
42	22	10	15	11	100

3. CURRENT RESPONSES TO DOMESTIC VIOLENCE IN ONTARIO

There is a trend in Ontario to provide modern and effective, swifter and more accessible criminal, family and civil justice services:

"Our goal is to strengthen community safety through a modern, more accessible and more effective justice system that serves all Ontarians - a system that contributes to our province's competitive advantage by providing an affordable forum for the quick resolution of disputes."³⁰

There are a number of civil justice initiatives currently underway in the Province. There are four initiatives which directly or indirectly address the issue of domestic violence in Ontario: The Civil Justice Review; Pilot Projects: Specialized Domestic Violence Courts; Community Victims' Initiatives Program (CVIP); and, the Family Violence Initiatives Project of the federal Department of Justice.³¹

4. DOMESTIC VIOLENCE: THE NATURE OF THE PROBLEM

The particular social context of domestic violence, the legal threshold governing the criminal prosecution of family violence against women and children, and the current ad hoc, truncated, and piecemeal justice system regime, demand a rational and more comprehensive approach to the problem of violence against women and children. The current regime appears to be inadequate in addressing the issues of violence against women and children.

The problem is threefold:

- the particular social manifestation of domestic violence;
- criminal proof and the difficulty in meeting the legal thresholds that

³⁰Attorney General Charles Harnick: Preamble to 1997/98 Business Plan, Your MAG et vous, Vol.9, No.2 July 1997 at 1.

³¹These four initiatives are more fully discussed in Appendix A attached.

govern the prosecution of both criminal and civil actions concerning domestic violence; and

- the ad-hoc and varied approach to the problem across Ontario.

These issues are more fully discussed below.

Despite limitations to the criminal law process in cases of domestic violence, Ontario's legal responses are almost exclusively criminal in focus. Domestic violence is a complex, multi-faceted issue; it is fundamentally human. From a principled and philosophical point of view, there is an urgent need to connect the legal processes and the human experiences.

(a) The Social Context of Domestic Violence

Domestic violence is a serious and prevalent social ill. The Government of Ontario is committed to addressing the issue of family violence against women and children.³²

Domestic violence causes lasting emotional damage. There are usually physical injuries to family members, particularly to women and children. There is also the attendant damage to property and the matrimonial home. Although some men are victims, it must be clearly stated that women and children are predominately the victims of domestic violence.

Many of the victims in these families live in fear of physical and sexual violence, and mental and emotional abuse. Victims of domestic violence often blame themselves for the violence that they suffer; they believe that the aggressor³³ may not be held accountable for his actions; they may not testify in court against the aggressor; and, there are linguistic and cultural barriers for some victims when dealing with the police services, family services, victims' groups, and the justice system.³⁴ Some victims of domestic violence are

³²Indeed the Attorney General has stated that: "Domestic assault is a crime that will not be tolerated....Men who abuse their partners must learn they will be forced to pay for their acts of violence. Every resident of Ontario has the right to live their lives without fear of physical abuse." *Ministry of the Attorney General News Release: "Attorney General announces six additional specialized courts to combat domestic violence,"* July 2, 1997.

³³In this discussion paper, the terms "aggressor" and "abuser" are used interchangeably.

³⁴Nicholas Bala, "Spousal Abuse And Children of Divorce: A Differentiated Approach" (1996), 13 Can Family Law 215 at 222.

unaware that they have an option to improve or change their family situation.

Domestic violence is a social problem that is cyclical.³⁵ The victims and perpetrators are caught in an abusive cycle of violence and forgiveness and dependence. The family members are bound by familial bonds and obligations and history. Thus, there is often intense, short-term and repeated use of police services for emergency counselling, intervention and arrest. Further, there may be interactions with hospitals, health practitioners and community service agencies such as Children's Aid Societies.

The societal cost of domestic violence is a significant consideration for policymakers. Domestic violence has both intra-familial and external ramifications. For instance, sexual abuse of children is probably one of the costliest issues facing our society. Approximately 30% of psychiatric in-patients in psychiatric and general hospitals, health care system, legal system and social service systems are the victims of domestic violence.³⁶ In short, there are significant policing, health system and social services costs associated with, or caused by domestic violence.

(b) Sexual Abuse

In the past, "all but the most serious and obvious cases, domestic violence, child sexual abuse and even physical abuse of children were largely ignored by police and the courts. Cases of child sexual abuse (and sexual assault of adults) which were reported to the police were very difficult to

In a more serious example of the reaction to unidimensional responses to domestic violence, some experts, including some feminist scholars, are questioning whether there has been a too aggressive effort to criminally prosecute *all* cases of spousal assault. (See e.g. Dianne Martin & Janet Mosher, "Unkept Promises: Experiences of Immigrant Women with the Neo-Criminalization of Wife Abuse" (1995), 8 Can J. W. L. 3-44. See also *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (1995) at 212.

³⁵Nicholas Bala, *Ibid.* 226. He says:

The "cycle of violence" describes a pattern of wife abuse with three distinct phases: (1) tension building; (2) acute battering incident; and (3) loving contrition by the abuser. In the first phase there is increasing tension and verbal abuse, with the woman attempting to placate her partner. The tension builds until there is an acute battering incident, involving verbal and physical abuse; the woman may leave or call the police at this stage. In the contrition phase, the batterer is remorseful, apologizes and may send flowers or "court" his partner; she may persuade herself that he will not abuse again and resume the relationship, though without intervention it is virtually inevitable that the pattern will reoccur, sometimes with violence increasing. Understanding of this cycle of abuse is extremely important for those who work with abuse victims, since they are often called upon immediately after the abusive incident but then find themselves working in the "contrition" phase. Helping victims and abusers to understand this cycle can be a part of a successful intervention strategy.

³⁶Don Johnston, R.N. Barrie, *Toronto Star*, 26 January 1997 at PF2.

successfully prosecute because procedural and evidentiary rules were premised on the unreliability of child (and female) complainants."³⁷ In addition to these evidentiary considerations, the justice system response was further complicated by varied prosecution and prosecutorial techniques across Ontario. A vigorous prosecution of an offence in one jurisdiction of Ontario, may not merit an investigation in another jurisdiction.

The Summary Report of the Special Advisor to the Minister of National Health and Welfare on Child Sexual Abuse in Canada ("The Summary Report on Child Sexual Abuse") stated that "... sexual abuse demands a comprehensive legal response, coordinated within a social framework designed to protect child victims and to hold their offenders responsible."³⁸ In particular, the Report recommends:

- expediting child sexual abuse cases through the courts
- improved coordination of systems and professionals working with child sexual abuse cases
- improved linkage between the justice, correctional, probation and parole systems
- use of leverage in the justice system to mandate treatment opportunities
- improved consistency in sentencing
- requirements for education and training of all professionals in the legal system, including judges
- specialization in the field of investigations and prosecutions, and
- increased provision of victim witness support services.³⁹

³⁷Nicholas Bala, *Ibid.*, at 14.

³⁸Minister of National Health and Welfare (Canada), Reaching for Solutions: The Summary Report of the Special Advisor to the Minister of National Health and Welfare on Child Sexual Abuse in Canada, June 1990.

³⁹*Ibid.* at 15-16.

Issues of vulnerability, trust and dependency arise in child sexual abuse cases. Child sexual abuse within families is a subset of domestic violence and has particular issues that require specific legal responses.⁴⁰ What is clear is that, more than any other type of domestic violence case, child sexual abuse requires a coordinated, multi-disciplinary approach as well.

(c) The Criminal Threshold: The Crown Attorney's Decision to Prosecute

The justice system response to domestic violence in Ontario is largely criminal. With the exception of ad-hoc, case-by-case civil and family law jurisprudence and the newly established domestic violence courts, Ontario's response to domestic violence has been largely criminal in nature and intent. This in itself is a laudable effort because it has taken many years in Canada to criminalize domestic assault and to impose stricter sentencing guidelines for domestic-based assaults. This policy move by governments illustrates the

⁴⁰For example, see Toronto Star Editorial September 1, 1997 at A12:

"Sex Offender Registry. Our first instinct was to cheer Canada's chiefs of police for urging Ottawa to set up a new registry of sex offenders to help groups like scouts, athletic teams and schools weed out sexual predators who prey on young children. Canadians would welcome anything that would help stem this seemingly endless horror. But the registry is not the answer it seems at first glance. It would give the public a false sense of protection, while violating some people's basic rights.

Most men convicted of sexually abusing children in recent years had never been arrested on such charges before. A child abuse registry would not have helped agencies discover that they were sheltering such pedophiles in their midst. Checking an employee's references more thoroughly would have been more effective; many abusers are quietly turfed out of a job amid allegations of sexual abuse but manage to land another.

The registry would also do little to prevent abuse within families. Children are far more likely to be raped by a family member or friend than by someone outside the family's immediate circle.

The police chiefs are most definitely off the mark in wanting to include "suspected" abusers in their proposed registry. The guilty may sometimes go free, but it's equally true that some people are charged incorrectly. If a teacher is maliciously accused of abuse and cleared in court, that teacher shouldn't be forever stigmatized.

There are already two databases to check the background of potential volunteers or employees in Ontario. But the provincial child abuse registry is notoriously unreliable. It's supposedly a compendium of child abusers culled from the courts and child welfare reports. But the criteria are vague and privacy laws make it almost impossible for most groups to use.

There's also a national crime computer that tracks all convictions and arrests for serious offences. It's an excellent tool that's not properly used by those who would protect our children. Some service groups already demand that potential volunteers agree to a check of their criminal record. That in itself is likely to deter pedophiles.

Theoretically, a new child abuse registry would be easier to access because agencies could look at a person's record without their permission. Why not just ask for a person's permission to look at their criminal record, and weed out those who refuse? Several countries demand such a check before issuing visas.

There may be good reasons to set up a separate registry of pedophiles, but so far we haven't heard them."

gravity of abusive conduct and fulfils our societal need to see an aggressor or abuser punished for such action.

The criminal sanction of abusive conduct is effective when it works. However, the experience has been that the criminal prosecution of domestic violence is not generally successful. Part of the problem of criminal prosecutions is the issue of the criminal proof threshold.

The *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions* (the *Martin Committee Report*) sets out the Crown Attorney's obligation to screen every charge in a criminal case including domestic violence and sexual abuse. The *Martin Report* states that :

"[t]he question of what standard to apply when determining the sufficiency of evidence and the public interests in prosecution is an important one. In the committee's view, the proper standard, or proper threshold test, must be one that does not unduly restrict Crown counsel's prosecutorial discretion, but at the same time prevents the process of the criminal law from being used oppressively, where there is no realistic prospect of a conviction on the evidence. The prosecution must also be in the public interest."⁴¹

The first consideration by a Crown is whether there is a **reasonable prospect of conviction** in a criminal case. It is an objective test. The standard for this test has been interpreted to mean that a guilty verdict would not be unreasonable. The standard *does not* require a conclusion that a conviction is more likely than not. If the Crown decides that there is no reasonable prospect of conviction at any stage of the proceeding, then the prosecution of that charge must be discontinued.

The *Crown Discussion Manual*⁴² of the Ministry of the Attorney General provides that in applying this test, Crown counsel should consider the following factors:

- the availability of evidence
- the admissibility of evidence

⁴¹ Province of Ontario. Ministry of the Attorney General. Crown Policy Manual. Policy C.S.-1, January 15, 1994, at page 2. Quoting the *Martin Committee Report*.

⁴² Province of Ontario. Ministry of the Attorney General. Crown Policy Manual. Policy C.S.-1, January 15, 1994.

- some assessment of the credibility of witnesses without usurping the function of the trier of fact, and,
- a consideration of any defences that should reasonably be known or that have come to the attention of the Crown.

There is also a second stage to the legal threshold: **Is the prosecution in the public interest?** Therefore, even if there is a reasonable prospect of conviction, a criminal charge may be screened out because the prosecution by the Crown Attorney would not be in the public interest. A public interest consideration must occur only *after* the consideration of a reasonable prospect of conviction. Further, it includes an assessment of a number of enumerated public interest factors which may be taken into account.⁴³

These public interest factors can be interpreted in such a manner as to pay close attention to domestic violence issues. For instance, one of the public interest factors may be an assessment by the Crown of the views of the victim. In addition, the age, physical and mental health of the witness may be taken into account.

There is, however, a problem when a domestic violence victim does not wish to press charges against the perpetrator due to fear, forgiveness or family obligations. In this sense, the victim's views are taken into account when the Crown attorney screens the case; however, they are not determinative. The *Martin Report* states that:

"... Crown counsel, when assessing whether it is in the public interest to recommend commencing criminal proceedings against a person, or the discontinuing of criminal proceedings against an accused, must take into account more than the sufficiency of the evidence against that person: all

⁴³Public Interest factors as outlined in the Crown Policy Manual include "the gravity or triviality of the incident; the circumstances and views of the victim; the age, physical health and mental health etc. of the accused or witness; the need for public confidence in the administration of justice; national security and international relations; the degree of culpability of the accused (particularly in relation to other alleged parties to the offence); the prevalence of the type of offence and any related need for deterrence; whether the consequences of any resulting conviction would be unduly harsh or oppressive; whether the accused is willing to cooperate or has already cooperated in the investigation or prosecution of others; the likely outcome in the event of finding guilt, having regard to the sentencing options available to the court; the strength of the Crown's case, the staleness of the alleged offence, or, the likely length and expense of the trial when considered in relation to the seriousness of the offence; the availability and efficacy of any alternatives to prosecution such as civil diversion, civil remedies, or a stay of proceedings in minor property cases; and the content of any published policy statement from the Ministry of the Attorney General including any commentaries on this Crown Policy." (at 4).

relevant circumstances must be considered, keeping in mind that 'the contemporary view favours restraint generally in the exercise of criminal law power'."⁴⁴

Although the Crown attorney charge screening test appears clear, it seems to be quite subjective. This subjectivity is particularly important in the context of a given Crown attorney's experience in dealing with domestic violence. The training of Crown attorneys and some particularization of domestic-violence issues in the screening process, would be helpful. In the long-term however, this charge-screening process may be too generous a standard. It is not the purpose of this paper to recommend or redraft the charge screening process; rather this paper discusses holistic remedies for the victims of domestic violence after a decision has been made by the Crown attorney to not prosecute the criminal offence.⁴⁵

(d) The Legal Threshold in Child Protection Cases

Child protection matters are governed by the *Child and Family Services Act*.⁴⁶ Under section 37(2) of the *Act*, the relevant mandated Children's Aid Society may apply to the court in order to have a legal finding that a child is "in need of protection." The legal standard of proof is that the case be proven on a balance of probabilities.⁴⁷

⁴⁴Crown Policy Manual, quoting the *Martin Committee Report* at 1-2.

⁴⁵It should be noted that the majority of "domestic violence" caselaw concern the criminal prosecution of assaults that occur in domestic situations. Most of the caselaw is about the correct sentencing for accused individuals who have been convicted of assault etc.

The leading case is *R. v. Inwood* (Ont. C.A.) [1989] O.J. No. 428 (Quicklaw). The accused was charged and convicted with the common assault of his one year old son and assault causing bodily harm on his wife. He was convicted and sentenced to a three year term of probation for the assault on his wife and a one month sentence for the related assault on his son. The accused had served the custodial term of one month. The Crown appealed the sentence. The Ontario Court of Appeal dismissed the appeal and held that:

"... [a] custodial term of three months should have been imposed. General and individual deterrence must be paramount considerations in sentencing in order to protect the public. [This] principle is applicable not only to violence between strangers but to domestic violence. Domestic assaults are not private matters, and spouses are entitled to protection from violence just as strangers are. The custodial term should be imposed where there is significant bodily harm inflicted. Still, [in this case] the hardship from reincarceration for a comparatively short period of time is out of proportion to the deterrent effect." [Emphasis added].

⁴⁶R.S.O., 1990 Chapter C. 11.

⁴⁷*Children's Aid Society of Metropolitan Toronto v. A.D.* (Ont. Ct. Gen. Div.) [1993] O.J. No. 3129 (Quicklaw) Wilson J.

It is significant to note that approximately 80% of cases that are investigated by Children's Aid Societies do not convert themselves to a court case.⁴⁸ Therefore, in only 20% of child protection investigation cases is there an application initiated by a Children's Aid Society. It is significant that 80% of the CAS caseload is not in the court system at all and that, therefore, the behaviour of some aggressors is not under the scrutiny of a judge. Ultimately, the well-being of children is at stake.

In our opinion, there is a great potential to link the criminal prosecution of domestic violence with the prosecution of child protection cases and to link Children's Aid Societies cases with private custody and access disputes in the family law court.

(e) The Legal Threshold in Private Civil Law

Domestic violence cases that are not criminally prosecuted or addressed through child protection investigations or proceedings, may be addressed through civil law remedies. In the civil law scheme, an individual retains a lawyer to assist with self-help remedies. A civil action presumes the financial capacity of the individual to retain counsel, a certain capacity to instruct counsel, and the existence of the will and support system to undergo a possibly long-term and onerous civil action. In some cases, there may also be the possibility of legal aid assistance.⁴⁹

One benefit of the civil system is that the legal standard of proof of the facts is based upon a balance of probabilities. This is a lower standard of proof than that of criminal cases which requires proof beyond a reasonable doubt. This civil proof standard in certain cases may be a more amenable solution to the problem of prosecuting and adjudicating domestic violence cases in Ontario courts of law.

⁴⁸Willson A. McTavish, *Delay within the Administration of Justice in Proceedings Involving the Care, Custody and Access of Children*, Ministry of the Attorney General, March 8, 1995, at 17.

⁴⁹In the last few years, legal aid assistance has been limited largely to criminal cases. There is still some legal aid assistance provided to individuals in family law cases. With regard to civil claims, legal aid has been limited to disbursements only.

5. CURRENT LEGAL AND JUSTICE SYSTEM RESPONSES TO DOMESTIC VIOLENCE

There are various initiatives and legal remedies available in criminal and civil law.

(a) Recent Provincial Initiatives

(i) Specialized Domestic Violence Courts

There are some current government initiatives underway to address issues of domestic violence in Ontario. Specialized domestic violence courts have been established as pilot projects in Stratford, North York, Toronto and Old City Hall. Six new domestic violence courts have been established in North Bay, Brampton, Oshawa, Ottawa, London and Hamilton.

The courts in North Bay, Brampton and Oshawa are based on the North York model which is designed to break the cycle of violence through early intensive intervention. This model focuses on selected cases of first time offenders where the victim did not suffer any significant physical injuries. The offender must take responsibility for his actions, plead guilty and complete a male aggressors' program. The victim must also agree to the aggressor's participation in the program and the resolution of the charge. If the program is successfully completed by the aggressor, the Crown attorney may recommend a conditional discharge and probation as the appropriate resolution for the charge.

A second domestic violence model based upon the Old City Hall (Toronto) approach, focuses on the use of additional evidence such as 911 tapes, crime scene photos, victim's injuries photos, and audio-visual recordings of the victims statements to the police to improve the success rate of criminal prosecutions.

It is the North York model that is transportable to the family law system. The aggressor must take responsibility for his actions; hence there is the possibility of providing remedies applicable to the particular problems of the aggressor and the victims. It may be a forerunner to the establishment of a Family Violence Court such as the one set up in Winnipeg, Manitoba, since 1990. However, this model may fall short, as it is still contingent on the consent of the aggressor.

(ii) *Victims of Domestic Violence Acts* (Sask. & P.E.I.)

The *Victims of Domestic Violence Acts* in Saskatchewan and Prince Edward Island provide additional civil remedies for victims of domestic violence. This approach allows victims of domestic violence, police officers or other designates and any other person to apply for an *emergency* intervention order with leave of a judicial officer. The judicial officer may make an emergency intervention order:

- granting exclusive possession of the family residence to the victim
- authorizing the police to remove the respondent from the residence
- authorizing the police to remove the respondent's possessions from the residence
- prohibiting the respondent from communicating/contacting the victim and specified others, and,
- any other provision necessary for the immediate protection of the victim such as compensation for monetary loss, temporary possession of specified property, etc.

These *Acts* are emergency protection measures. However, the short-term nature of them is also a limitation. It does not address the nature and long-term effects of domestic violence and the integrated issues of emotional abuse and family breakdown. Further, there is the issue of enforcement. How well are the emergency measures being effectively enforced, and by whom?

(b) The Criminal Injuries Compensation Board (CICB)

The Criminal Injuries Compensation Board (CICB) is another avenue of redress for victims of domestic violence. Victims may apply for monetary compensation for damages arising from criminal activity against them by a perpetrator. The present CICB regime recognizes injury caused by a "crime of violence" against victims who apply under the *Compensation for Victims of*

Crime Act.⁵⁰ Specifically, before awarding damages, the Board must find on the facts of the case and proven on a balance of probabilities, that the victim was injured as a result of the commission of a crime of violence.⁵¹ The existence of a legal crime must be proven; however, a criminal conviction, though helpful, is not necessary.

The Board awards damages for pain and suffering, and, also, costs such as transportation, legal and other costs resulting from the criminal injury. The Board may award damages for "nervous shock" suffered by the victim as a result of the criminal injury. There appears to be a high test for "nervous shock"; CICB cases suggest that there is an obligation on behalf of the victim to seek and receive psychiatric treatment. The awards may be somewhat arbitrary and there is a tenuous link between damages awarded and whether the injury claimed is truly a result of the commission of a crime of violence.

The CICB scheme is helpful. However, the award scheme is unknown to some victims, and it does not deal with the victims' need and society's need to see the aggressor held accountable for his actions. Although there is a state recognition of the injury suffered and some compensation awarded, it is the state (and not the aggressor) that steps in to ameliorate the injury caused by the aggressor.

In CICB cases, there is a greater likelihood of an award if the claimant is the direct victim of crime. This suggests that it may be difficult for children and collateral victims of crime to establish a claim. Victims are more likely to be compensated for pain and suffering, rather than relevant and associated costs.⁵²

(c) Injunction to Remove Aggressor from Matrimonial Home

In Ontario, victims of domestic violence have the option to apply for a court order to remove the aggressor from the matrimonial home. Under

⁵⁰R.S.O., 1990, c. C-24.

⁵¹As per s.5(a) of the *Compensation for Victims of Crime Act*, R.S.O., 1990, c. C-24.

⁵²Ontario Criminal Injuries Compensation Board, 23rd Annual Report, for the Fiscal Year, April 1, 1993 to March 31, 1994. An anecdotal survey of sample CICB cases in 1993-94 finds that only 2 of the 28 cases listed, concern domestic violence. Both cases, though only illustrative, appear to be quite excessive or readily apparent cases of domestic violence. Further, one of the two cases was heard by the Board on appeal.

section 24(3) and (4) of the *Family Law Act*,⁵³ a married spouse may apply to the Ontario Court (General Division) to obtain exclusive possession of the matrimonial home. In considering whether to grant exclusive possession in a given situation, the court will consider whether there is sufficient evidence of violence against the spouse or children. The court also considers the "best interests of children" which includes their "wishes" about whether the other parent should be excluded.⁵⁴

This remedy applies to married spouses only. The application must be made to a General Division judge only, whereas Provincial Division judges are more familiar and are more sensitized to issues of domestic violence. This injunction remedy presumes that the victim is aware of this option, and has the skill or financial ability to apply to court or retain counsel to do so. This option precludes many victims of domestic violence.

Victims of Domestic Violence Acts in Saskatchewan and Prince Edward Island allow for an application for a temporary and emergency removal of the perpetrator from the home. There is a need to strengthen this option for victims of domestic violence so that the aggressor may be barred from the matrimonial home for a longer period of time, or indefinitely or permanently.

(d) Civil Action for Damages in Tort

Caselaw suggests that victims may be able to sue the abuser for damages in tort.⁵⁵ In common law jurisprudence, a victim may sue civilly for conduct by the abuser which amounts to the tort of battery or assault. The victim may sue for damages based on the facts of the case proven on the balance of probabilities. Further, a civil action does not preclude a criminal assault prosecution and vice versa or even an application by a Children's Aid Society to declare a child in need of protection. In theory, victims of civil batteries and criminal assaults may sue for tort compensation, however, these

⁵³R.S.O. 1990 Chapter F.3.

⁵⁴The Children's Lawyer has rarely been requested by a court to represent the children in an application for such an order; however, the exclusion of the other parent from the home is a prominent issue in all custody/access cases in which the Children's Lawyer acts as legal representative for the child. Also see Bala "Spousal Abuse And Children of Divorce": A Differentiated Approach (1996) 13 Can. J. Fam. L. 215 at 251.

⁵⁵Assaulted women may be able to receive compensation for their physical and mental injuries, related expenses and loss of income. Canadian law recognizes four intentional torts: assault, battery, false imprisonment, and occasionally the intentional infliction of mental suffering. Nicole Tellier, Jane Silver and Taivi Lobu et al, Assaulted Women: A Manual for Advocates, Community Legal Education Ontario (CLEO), 1990, at 5-4 to 5-5.

actions are rarely successful in practice.⁵⁶ Indeed, in Ontario only about 1.8% of victims of crime collect from their attackers.⁵⁷ It is reasonable to conclude that the number of successful claimants in domestic violence cases will be even lower.

Although the right of a victim to sue for damages in tort is longstanding, the rate and likelihood of success is low. Further, there is a significant question as to whether the victim will sue due to financial, cultural or emotional barriers.

(e) Criminal Prosecutions

As discussed above, some criminal prosecutions by the Crown in domestic violence cases are difficult to initiate due to the two-part threshold test. This segmented criminal response to domestic violence in Ontario is a blunt social instrument for dealing with families and children.⁵⁸ Further, even where a conviction is achieved in a criminal prosecution, the sentence imposed is generally lenient and inadequate in relation to the gravity of the offence. It has been conceded that "fines, probation and even discharges [are] routinely granted for domestic assaults, and that suspended sentences imposed... [are] not an exceptional disposition."⁵⁹ In many courts in Ontario, domestic assault cases are still not afforded the attention, weight, and significance that they deserve.

(f) Restraining Orders: Sureties to Keep the Peace (Peace Bonds)

A victim may lay information before a judge of the Ontario Court, General or Provincial Divisions, to restrain a spouse or former spouse from harassing the spouse and the applicant's children, and to restrain the spouse from communicating with the spouse or the applicant's children.⁶⁰ These

⁵⁶Allen M. Linden, Canadian Tort Law, 4th Edition, (Toronto: Butterworths), 1988, at 46.

⁵⁷*Ibid.*, at 46.

⁵⁸See page 3 *supra*.

⁵⁹*R. v. Inwood* (Ont. C.A.) [1989] O.J. No. 428 (Quicklaw).

⁶⁰Martin's Annual Criminal Code, 1998, (Aurora, Ontario: Canada Law Book Inc.), 1998, s. 810 at CC 1286.

sureties to keep the peace and restraining orders apply to common-law spouses as well. It should be noted that the relevant parties must also appear before the judge who receives an information in the summary conviction court having jurisdiction. Sureties to keep the peace require a court appearance by the parties and, by extension, a willingness on the part of the victim to become involved in a criminal court proceeding.

(g) Child Protection

Children who are being abused or are in situations of family violence, may be apprehended by local Children's Aid Societies. Section 37(2)(l) of the *Child and Family Services Act* states among other things that a child is in need of protection when the child is, or is at risk of being physically abused, or when the child is, or is at risk of being sexually abused. Through social workers, the Societies work with families to seek help and stop the violence.

In Ontario, 55 child protection agencies are available to protect children in family violence situations, and where a child is "in need of protection" because of family violence, the Society is able to apprehend the child. However, in many cases, the "other" victim of violence (usually the woman) remains in the family violence situation; the Children's Aid Societies across Ontario are primarily *child protection* agencies. Their primary focus is with children, and their primary goal is to protect children.

As a result of the Coroners' Inquests into child deaths, a Panel of Experts headed by Judge Mary Jane Hatton has made recommendations in a Report to the Minister of Community and Social Services about changes to the *Child and Family Services Act* (as at the publication of this paper, the Report has not been released by the Minister). Submissions were made to the Panel that the definition of a "child in need of protection" should be expanded to include a child's exposure to domestic violence.

(h) Custody and Access Cases

person will cause personal injury to him or her or to his or her spouse or child or will damage his or her property.

Children's Law Reform Act, section 35: An order may be made "restraining a person from molesting, annoying or harassing" the applicant or child, and a single incident occurring two years previously may not be sufficient to obtain the order (*Kellepan* vs *Kellepan* [1993] B.C.J. 725 (S.C.))

Children who are living in abusive families may be the subjects of a custody or access action commenced by their father or mother against the other parent. Judges appear to be placing significant weight upon spousal abuse.⁶¹ There appears to be a trend in other jurisdictions to create a presumption that an abusive spouse should be denied access because even supervised access may be harmful and will not be in the best interests of the children.

In all custody and access cases where the Children's Lawyer is appointed to legally represent a child or to prepare a social work report, children ask us to stop the fighting between their parents. We are successful in 90% of the cases in the sense that an agreement is reached by the parents. We do not know, however, whether the fighting actually stops unless the matter is brought back to the family law court and we are requested by the judge to intervene again.

6. LIMITATIONS TO THE CURRENT LEGAL AND JUSTICE SYSTEM RESPONSES TO DOMESTIC VIOLENCE

There are a number of limitations and challenges to the current legal and justice system responses to domestic violence in Ontario. Despite the domestic violence pilot projects and studies, legal remedies, and civil justice system reviews, there is a need for a coordinated discussion which addresses holistically the specific issues arising out of domestic violence.

In Ontario, with regard to criminal charges generally, only about nine percent of criminal charges go to trial.⁶² The percentage is likely lower where domestic violence criminal charges are concerned.

Crown attorneys will proceed with a criminal charge in domestic violence cases where the evidence and circumstances meet the dual threshold test of a reasonable prospect of conviction, and a prosecution in the public interest. However, even if the charge is prosecuted, the standard of evidentiary proof - "beyond a reasonable doubt" - is difficult to meet without

⁶¹Nicolas Bala, "Spousal Abuse And Children of Divorce": A Differentiated Approach (1996) 13 Can J. Fam. L. 215 at 252.

⁶²Graham Reynolds, former Assistant Deputy Minister, Criminal Division, Ministry of the Attorney General, Province of Ontario.

corroborative evidence. Thus, some domestic violence charges are not prosecuted or do not proceed to trial or result in an acquittal.

To a great extent, domestic violence is necessarily but not sufficiently criminal. Domestic violence situations are different. Domestic violence concerns human beings and emotions; it is a complex and multi-layered issue. Professor Bala writes that:

The justice system must "be attentive to differences between wife assault and stranger assault, and the differences among women in their material, social and emotive lives." [Martin and Mosher argue that the] "criminal law can only play a limited role in dealing with spousal battering, and major efforts should be taken in other directions. While the police must take domestic violence calls very seriously, an automatic charging discussion and overly aggressive use of the criminal justice system may not ultimately help those victims in greatest need. There must be a more sophisticated, contextual approach to the complex familial problems raised."⁶³

The current criminal and civil remedies appear to fall short of answering the problem of domestic violence. Although the administration of justice appears to be taking a "zero tolerance" approach to domestic violence, families need other remedies to feel that justice has been served and personal liberty restored. The inherent power imbalance in the adversarial judicial system which reinforces the power imbalance in the domestic relationship (for children, especially, it continues after separation), needs to be overcome.

Another challenge is that of overlapping criminal and civil jurisdictions. The nature of domestic violence is that it is diffuse between the criminal sphere and the civil context. For example, a domestic violence incident can include assault charges, child protection authority involvement, substantial damage to property and physical and emotional injuries. It is submitted that this problem can be better addressed through a clearer delineation of the jurisdiction of the family law court in Ontario, and a more sophisticated intervention by the Crown as represented by the Attorney General.

(a) Experience and Training

Sufficient experience and training is always a challenge for the judiciary and the Crown when dealing with domestic violence cases.⁶⁴ In Ontario,

⁶³Dianne Martin and Janet Mosher cited in Nicholas Bala, *Ibid.*, at 39.

⁶⁴For example, in the United Kingdom, newly appointed magistrates of the family panel undergo family law and

Provincial Court family judges, police, Children's Aid Societies, the Children's Lawyer, specialized Crown attorneys and the various shelters and supervised access centres staff, are some of the more experienced persons in the justice system. For example, there are the clinical and social work issues involved in interviewing children; these include child development issues, communication, memory issues, suggestibility, child sexuality, and child witness law. Also there is the difficult issue of retraction or false denials or exaggerated allegations which may occur after the initial contact by the police with the family.

(b) Ad-Hoc Application and Varied Jurisprudence

Another fundamental difficulty in addressing the issue of domestic violence in Ontario is the fact that remedies to address domestic violence appear to be applied inconsistently across Ontario. The judiciary in different jurisdictions apply various remedies in varying degrees. Further, there is also

children's law training, which includes (amongst other things) that they "know of the powers available to deal with financial orders and domestic violence." Children Act Advisory Committee, Final Report, (Office of the Lord Chancellor's Department, United Kingdom), June 1997, at 46.

Also, Nicholas Bala describes in Spousal Abuse And Children of Divorce: A Differentiated Approach (1996) 13 Can. J. Fam. L.215 at 228.

In 1993 Janet Johnston and Linda Campbell, two California-based mental health professionals, developed a differentiated set of "profiles" of relationships involving interspousal abuse, arguing that parent child relationships differ in each of these situations. This range of profiles provides a richer picture than Walker, though it clearly builds on her work.

The Johnston and Campbell profiles were based on a sample of their custody and access assessments, during which periods three-quarters of their assessments involved issues of domestic violence.

Professor Bala describes the profiles,

- A. On-going or Episodic Male Battering
- B. Male Controlling Interactive Violence
- C. Separation-Engendered and Postdivorce Trauma
- D. Female Initiated Violence
- E. Psychotic and Paranoid Reactions

and cautions:

"The relative size of the Johnston and Campbell categories must be approached with real caution, due to the small size of the study (140 families). Further, as it was a sample drawn from litigation cases sent for assessment, it undoubtedly understates [the] proportion of serious abuse by males - cases that would not get to the assessment stage of custody or access disputes because the father is so obviously inadequate. A Canadian study by Jaffe and Austin found that in only 4% of a sample, of contested custody and access cases involving domestic violence, was there spousal abuse by the wife alone, and in 9% of the sample the violence involved mutual abuse (Peter Jaffe and Gary Austin, "The impact of witnessing violence on children in custody and visitation disputes," presented at the International Family Violence Research Conference, Durham, New Hampshire, July 1995).

an inconsistency within the judiciary in their application of civil remedies. There appears to be a discordance between the jurisprudence of the Ontario Court (Provincial Division) and the Ontario Court (General Division). This inconsistent application further underscores the need for uniform training of the judiciary and the Crown in domestic abuse matters and the remedies available at law. This can best be done in a unified family law court in Ontario and the consistent intervention of the Crown in applying criminal and civil remedies to domestic violence.

(c) Protocols

As discussed above, many situations of domestic violence involve police services and child protection services. There is a need for further coordination of police and social work investigations with families at risk of ongoing domestic violence.⁶⁵ This includes a set of protocols between the police and the Children's Aid Authorities, inter-disciplinary training, and more sensitized investigation techniques as developed, for example, by the Metropolitan Toronto Task Force on Sexual Abuse.

(d) Gender Issues

Domestic violence issues necessarily involve gender issues. There is the issue of comfort and familiarity among the victimized members of families in conflict (who are likely to be women and children) and the officials who become involved with these families. The various officials such as judges, probation officers, police services, Crown, lawyers, etc., involved in domestic violence issues should be further sensitized to issues of gender.

⁶⁵In *Children's Aid Society of Hamilton-Wentworth v. S.T.* (Ont. Ct. Gen. Div.) [1996] O.J. No. 3578 (Quicklaw), the Court dismissed a CAS motion to direct the police to produce past occurrence reports about domestic violence in a protection hearing concerning a child. The court held that the matters in such documents were res judicata. Further, the CAS affidavit material offered no evidence that the family had been involved with the police since the date of the last protection order.

It is argued that a protocol or a memorandum of understanding between the CAS and the police department may have avoided this motion and would have allowed relevant information to be shared between the services and before the family court judge.

(e) Educate and Empower

Finally, there is the ultimate challenge to educate and empower the victim to end the cycle of violence. Domestic violence is often characterized by victims experiencing "deep fear, terror, internalization of blame, denial, minimization of incidents, loss of control, helplessness and isolation."⁶⁶ Thus, many proposals aimed at addressing domestic violence focus to one extent or another on education and support to the victim.

There is a need, therefore, to rationalize the resources within the administration of justice which respond to domestic violence so that victims are educated and in this way further empowered to deal with the violence.

⁶⁶Department of Justice (Canada), Family Violence: Lessons Learned Through Project Development, July 1994 (Revised 1996), at 11.

III. RECOMMENDATIONS

1. COMPREHENSIVE JUSTICE SYSTEM RESPONSE TO DOMESTIC VIOLENCE NEEDED

The various remedies and justice system initiatives currently underway and discussed above in this paper are important. However, the remedies and initiatives are piecemeal. Each remedy independently and in relative isolation of one another, deals with some of the issues of domestic violence, but not all. These responses are uncoordinated, limited in application and are geographically differentiated across Ontario. There is a need for a clear, uniform and consistent approach to domestic violence in Ontario.

Further, the recent justice system initiatives are particularly criminal in focus; what is required is a comprehensive legal strategy coordinated with the criminal threshold issues of laying charges, prosecution, proof and sentencing of the offender. The existing legal remedies and justice system initiatives appear to be heading towards:

- a re-alignment of fiscal and human resources to protect and focus on the victims
- moving the focus back to the victim (unlike accused/defendant-centred criminal system)
- including the victim (or at least the victim's concerns) in trial preparation by counsel (with the victim's therapist/social worker)
- focusing attention upon psychological and emotional injuries and obtaining civil damages (which is unavailable in criminal cases)
- providing a comparatively more comfortable (less traumatic) process for victims and witnesses
- dealing with the power imbalance suffered by victims at the hands of the aggressor
- the successful prosecution of abusers
- holding abusers accountable
- fostering safer communities for Ontarians

It is recommended that the proposed legal remedy to domestic violence contemplate a two-pronged approach:

- the diversion of some criminal charges in domestic violence cases which do not meet the Crown attorney's charge screening threshold to the civil family law system; and,
- the consistent implementation of civil remedies in domestic violence cases within a family law court civil justice system throughout all of Ontario.

In response to the limitations of criminal prosecutions and the ad hoc and underutilized civil remedies, there is a need to consider an integrated and focused service delivery for domestic violence in Ontario. There is a need to soberly consider a holistic, yet complementary alternative to the criminal prosecution of the perpetrators of domestic violence. It has been noted that:

"[w]hile many forms of exploitative conduct are criminal offences, and there must be resort to the criminal process, there should also be appreciation that crimes committed within a family are in some respects different from crimes between strangers. There may have to be modifications to criminal processes in order to respond to the complexity of family violence. In some cases this may require extra protections and supports for victims, to ensure that they are not further abused as a result of involvement in the court system. In some situations, the breach of trust involved in familial abuse may merit more severe sanctions. In some cases, recognition of the unique context of family violence may require modification of traditional criminal procedures, or sentencing to minimize disruption to victims from the prosecution of the accused and to recognize a continuing relationship between the victim and the offender."⁶⁷

Studies and pilot projects in other jurisdictions have shown that there is a possibility of some sort of diversion for some domestic violence cases.⁶⁸ Thus, it is recommended that in those cases which do not meet the dual threshold for criminal prosecution, some domestic violence cases should be diverted to the civil justice system. It is recommended that these domestic violence cases be heard in the family law court.

This diversion approach contemplates not only the punishment or liability of the aggressors of domestic violence, but also the support of the victims of domestic violence and the healing of the family members. This requires an integrated approach. That is, an interface or link between the

⁶⁷Nicholas Bala, *Ibid.*, at 57.

⁶⁸Prairie Research Associates, Manitoba Spouse Abuse Tracking Project (1994, Ottawa Department of Justice Working Document), Recommendations 5 & 7. Ellen Pence et al, A Justice System's Response to Domestic Assault Cases: A Guide for Policy Development, Minnesota Program Development, Inc. Domestic Abuse Intervention Project, Duluth, MN. 1990. The Oregon Task Force Report.

criminal and civil jurisdictions where family law and domestic violence is concerned.⁶⁹ This is an holistic approach for domestic violence in Ontario.

2. A FAMILY COURT FOR ONTARIO

It is argued above that the justice system response to domestic violence in Ontario is uncoordinated, piecemeal and limited in effect. Further, there are gaps in the law for the protection of children and vulnerable persons that can be filled by legislation, regulations, common law, and the residual *parens patriae* jurisdiction of the Crown. Unlike the Ontario Court (Provincial Division), the family court branch of the Ontario Court (General Division) has specific jurisdiction.⁷⁰ This allows the family law court a greater flexibility to engage available local resources and to order and implement civil remedies in cases of domestic violence.

The systemic benefit of a single family law court in Ontario is widely acknowledged. Judges, lawyers, academics and parties are agreed as to the value of such a court for Ontario. Yet, the progress has been very slow. The difficulty lies in the jurisdictional politics between the federal and provincial governments.

Also, there is a thread that runs between the legal issues in family law cases. This is particularly true of domestic violence cases. As Professor Bala writes:

"...there is often a linkage between legal issues in this field. It is important to have an appropriate forum to expeditiously resolve as many facets of a dispute as possible. Having Unified Family Courts and other specialized tribunals to handle cases can ensure that judges have adequate knowledge and sensitivity, as well as facilitating the provision of appropriate support services. This should result in a more efficient, effective response to the social and legal problems which arise."⁷¹

⁶⁹The interface between criminal and civil jurisdiction in family law matters has been acknowledged by other jurisdictions. For example, in the United Kingdom, the Office of the Lord Chancellor's Department has initiated joint case management schemes in cases concerning children. According to the Children Act Advisory Committee, Final Report, June 1997, at 35 "...there are now two pilot schemes, one in Liverpool and one in Norwich, for the joint management by one judge of concurrent care and criminal proceedings involving the same child or children." The Office of the Lord Chancellor's Department believes that "this area is one in which an early split hearing could be ordered so that threshold criteria can be adjudicated even if the outcome has to be uncertain until the outcome of the criminal proceedings."

⁷⁰See *Courts of Justice Act*, R.S.O. 1990, Chap. C.43, at s.21 (Unified Family Court is established in municipalities located in Hamilton-Wentworth, Frontenac, Middlesex, Lennox and Addington, and Simcoe).

⁷¹Nicholas Bala, *Ibid.*, at 48-49.

There is a concern that unlike Provincial Division judges, the General Division judges are less familiar and have less experience with regard to domestic violence issues. It has been suggested that Provincial Division judges are more likely to find an aggressor criminally responsible in a domestic violence case. If we are to achieve integration and consistency, a unified family law court (with both Provincial and General Division duties and remedies) staffed by a judiciary sensitized and experienced in domestic violence, is a necessary component of family justice in Ontario.

A unified family law court for Ontario would look at the array of social and legal issues and apply a number of civil remedies in domestic violence cases which have regard to personal and real property issues, custody and access to children, child protection issues, financial support and therapeutic treatment. Unifying the system and establishing the progression from criminal to civil responsibility, will assist in fostering a more consistent approach in domestic violence cases. Indeed, the judicial experience of dealing with violent young offenders in unified family court settings allows for a better transition from criminal proof to civil proof and establishes more clearly a sense of justice for the victims.

Also, the experience has been that family law conflicts are arguably the most important of the courts' business but are often given the lowest priority on the trial lists, being assigned to whatever judges are available to take them.⁷² In the context of a unified family law court, family law cases and, therefore, many domestic violence cases, will be given the priority and attention that they deserve.

Thus, a unified family law court for Ontario should be staffed with sensitized judiciary and justice personnel with the ability to apply multi-disciplinary solutions. There is a real need for this multi-disciplinary approach to family violence, and in particular, there is need for the criminal justice system to be part of a "team approach."⁷³ In a team approach, police services, family and child services, and the community, work integrally and cooperatively to address the issues of domestic violence. This will also seek to rationalize the various participants in family violence initiatives and responses. At present, the legal processes, social and police services, and community

⁷²Willson A. McTavish, "Family law in Ontario requires guiding principles and values," Ontario Lawyer's Gazette, May/June 1997, at 27.

⁷³"Participants in the criminal justice response to family violence include: police, Crown attorneys, defence lawyers, judges, probation services, correctional personnel, family welfare services, victim service agencies, social services, teachers, mental health workers, women's organizations, tribal councils, Aboriginal services, and multicultural and visible minority groups." Department of Justice (Canada), Family Violence: Lessons Learned Through Project Development, (Project Development and Discretionary Funds Section), July 1994 (Revised March 1996).

initiatives occur in relative isolation, and the results are too ad hoc and uneven. The leadership of a unified family law court for Ontario will spur greater cooperation and interagency protocols at the municipal and regional levels of resources in the province.⁷⁴

⁷⁴Dr. Janet R. Johnson, a social worker and teacher in California, recommends that the family court become proactive, taking a leadership role in assembling a cooperative, integrated approach by the professions which are involved with the family to resolve issues such as domestic violence. In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce, December 1996 Chapter 9, she says at 268 and 269:

"What is most troubling is that these families often do not seem to resolve their conflicts despite the increased attention they receive and the unusual amount of private and public resources expended on their behalf. Instead, their children continue to be exposed to the constant stress and disruption of their parents' disputes, unrelenting anger, and distrust. It is time to use the public and private resources that are already being expended in cost-efficient and clinically effective dispute-resolution forums that will be more responsive, more humane, and more suited to the needs of these families.

Making family separation and divorce less painful for children and parents will require a fundamental redefinition of the role of the court. Furthermore, it will require new multi-disciplinary partnerships between the court and attorneys, mediators, and mental health professionals, in order to arrive at viable solutions. This calls for a corresponding shift in perspectives and functions among these helping professionals, and a rethinking of their ethical obligations.

Currently, there are a number of assumptions about the role of the court in highly conflicted custody matters that need to be questioned. First, family courts have been used primarily to make decisions for divorcing couples who cannot make their own--as if courts have some greater wisdom, some special knowledge about what is best for children. Second, family courts have been induced to act in *loco parentis* for some highly conflicted families--as if courts have the capacity to monitor the day-to-day care of children. Third, the custody litigation process has been primarily used to determine which parent is the better parent and to relegate the other to a secondary, inferior status--as if it were appropriate for disputing parents to be publicly scrutinized and held to a higher standard of accountability than those in non-disputing divorces or intact families. Fourth, judges have been asked to take on and resolve family dilemmas that other professionals and the community-at-large have failed to resolve--the cases that attorneys have failed to negotiate, and that mediators have failed to settle, for families that counsellors and therapists have failed to help. Inexplicably, there is an assumption that judges have some special capacity to resolve the most difficult, the most complex of all family problems. Is it any wonder that family court assignments for judges are so unpopular, so often avoided, and usually staffed by rotating assignments in order to prevent burn-out?

We submit that none of these functions should be primarily the court's responsibility. Rather, within its vested authority, the role of the family court should be one of leadership in bringing the issues, the parties, and their helpers to the table to determine the following: first, how fractured families can coordinate their resources and care for their children after the parents' separation; second, how families can be helped to protect, preserve, and reconstitute the positive aspects of the parent-child and other family relationships, wherever possible; third, how parents can resolve their ongoing disputes and deal flexibly with subsequent child-rearing issues in a timely manner, during the years that follow the divorce; and fourth, what help these families are going to need from the community while raising their children (Wallerstein, 1991). Note that this reframing of the court's primary function entails a proactive rather than a reactive stance. While the court can provide leadership in this set of tasks, it will require that each of the helping professions reorient the focus of their efforts in

The 1997 family law decision of *Allen v. Grenier*⁷⁵ in the Hamilton Unified Family Court considers the issue of access enforcement by police services. The decision of Mazza J. highlights that police services require clear direction in Court orders in order to enforce custody or access orders under the *Children's Law Reform Act*, since the police services will only enforce access if the Order is made pursuant to s.37 of the *Act*. A family court judge (as part of an integrated family justice system) will make specific reference in custody and access cases to ensure enforcement by the police services, and, perhaps, even as it applies to domestic violence situations before the courts.

3. THE DIVERSION OF DOMESTIC ABUSE CASES WHICH DO NOT MEET THE CRIMINAL THRESHOLD

(a) Procedural Issues

(i) A Domestic Violence Civil Suit by the Crown

The criminal standard of proof is high. The Crown must prove that the offender is guilty of the crime (assault, sexual assault etc.) "beyond a reasonable doubt"⁷⁶. The burden is on the Crown to prove the offence. The

order to attain these goals."

⁷⁵(Unreported), Court File No. D 18/95. March 21, 1997.

⁷⁶The Supreme Court of Canada in *R. v. Morin* [1988] 2 S.C.R. (S.C.C.) 345 articulated the traditional meaning that:

Reasonable doubt plays two distinct roles in the criminal trial process. First, at the primary level, the facts upon which the jury rely in order to arrive at a determination of guilt must be established beyond a reasonable doubt. This means that the jury must be satisfied, within the context of all the facts of the case, that each of the facts they rely on for a finding of guilt has been proved beyond a reasonable doubt. After looking at the context of all the facts, if the jury still has a reasonable doubt about a particular fact, this doubt must be resolved in favour of the accused and that piece of evidence rejected. At the second level, reasonable doubt operates in the determination of guilt or innocence. The jury must look at the totality of the evidence and determine whether on the proved facts, i.e. on those facts which have survived the scrutiny at the primary level, the accused is guilty. If there remains a reasonable doubt as to the accused's guilt, the doubt must be resolved in favour of the accused and a verdict of not guilty entered. [Emphasis Added]

"Beyond a reasonable doubt" has also been articulated by the Supreme Court in *R. v. W. (D)*, [1991] 1 S.C.R. (S.C.C.) 742; *Cloutier v. Langlois* [1990] S.C.R. 158 at 182; and by the Ontario Court of Appeal in *R. v. Challice* [1979] 45 C.C.C. (2d) 546 (Ont. C.A.) at 557.

Reasonable doubt has not been clearly and substantively articulated. Indeed, appellate courts have criticized the further substantively articulate this principle. See *R. v. Morin* [1988] 2 S.C.R. 345 at 351; *Thomas v. R.* [1959-60] 102 C.L.R. 584 (Aus. H.C.). In *R. v. Campbell* (1977), 38 C.C.C. (2d) 6 at 7-8, Martin J.A. cautioned:

"the term "reasonable doubt" is, to a great extent, self-defining and its meaning is, I think, generally well-understood by the average person. Attempts to further amplify its meaning have often proved

civil law context has a lower standard of proof; the facts of the case need only be proved on "a balance of probabilities".⁷⁷ Once the aggressor has been found liable, many civil remedies are available to the court.

It is recommended that the Crown of Ontario divert criminal charges (that do not meet the criminal threshold for prosecution) to civil claims in order to successfully bring the perpetrators of domestic violence in Ontario to justice. Generally speaking, the Crown has discretion to divert criminal charges to civil claims under the *parens patriae* jurisdiction of the Attorney General.

The *parens patriae* jurisdiction of the Attorney General referred to s. 5(d) of the *Ministry of the Attorney General Act*⁷⁸ states that the Attorney General "shall perform the duties and have the powers that belong to the Attorney General of England by law or usage, so far as those duties and powers are applicable in Ontario ...". Further, it is well-recognized that the Crown has wide prosecutorial discretion. In the case of *R. v. Dempsey*,⁷⁹ Hill J. clearly stated that: "... prosecutorial authorities enjoy a broad discretion in the carriage of criminal cases including the decision as to what charges should be proceeded with once laid by the police."

In addition to the issue of Crown discretion, is the related issue of Crown immunity. A civil law regime for domestic violence implies claims, pleadings, motions and disclosure in accordance with the rules of civil procedure, as well as damages and the right of suit for costs. Will the Crown be held liable for costs in these quasi-civil domestic violence proceedings? The caselaw suggests that Crown Attorneys are immune from suit, as their litigation is carried out in the name of the Crown in the public interest.⁸⁰

unsuccessful and, as a general rule, it is both undesirable and unnecessary to elaborate upon its meaning by departing from traditional and accepted formulations."

⁷⁷Lord Denning stated that the civil burden of proof was such that "...if the evidence is such that the tribunal can say: 'we think it more probable than not,' the burden is discharged, but if the probabilities are equal it is not." *Miller v. Minister of Pensions*, [1947] Further, Cartwright J. in *Smith v. Smith*, [1952] 2 S.C.R. 312 at 3341-332, stated that civil cases may be proved by a preponderance of evidence or that a finding in such cases may be made upon the basis of a preponderance of probability and I do not propose to attempt a more precise statement of the rule. I wish, however, to emphasize that in every civil action before the tribunal can safely find the affirmative of an issue of fact required to be proved it must be reasonably satisfied, and that whether or not it will be so satisfied must depend upon the totality of the circumstances on which its judgment is formed including the gravity of the consequences of the finding.

⁷⁸R.S.O. 1990, c. M-17.

⁷⁹[1997] O.J. No. 477 (Ontario Court - Gen. Div.) per Hill J. at para. 9 (Unreported - Quicklaw). See also *Nelles v. Ontario et al* (1990), 35 O.A.C. 161 (S.C.C.) at 183 per Lamer J.; *The Queen v. T.(V)*. (1992), 71 C.C.C. (3d) 32 (S.C.C.) at 38-41 per L'Heureux-Dubé J.

⁸⁰*Nelles v. Ontario et al* (1990), 35 O.A.C. 161 (S.C.C.), Lamer J.

Thus, the recommendation to amalgamate Ontario's family courts as a fundamental legal process to better address legal issues facing families, particularly domestic violence, presumes that the Crown attorneys will divert to civil actions some criminal charges that do not meet the criminal threshold. In a civil suit on behalf of the victim, the Crown will have all rights of a plaintiff as in a civil action. The action will include the drafting and filing of pleadings, replies or answers, motions, and examinations for discovery. In addition, the Crown may agree to a consent settlement of the action to be approved by the family court judge.⁸¹ However, it must be clearly stated that domestic violence cases are not amenable to mediation or any form of alternative dispute resolution.⁸²

It must also be clearly stated that the intent of a domestic violence civil action is not to place the victim/complainant and the aggressor in another conflictual situation or to accord them equal blame in the domestic violence matter. Rather, the civil process and the lower legal threshold provide a likely more successful and more applicable manner to hold aggressors accountable. It is more likely that an aggressor will be found liable on a balance of probabilities in a civil suit, than guilty beyond a reasonable doubt in a criminal prosecution. Further, a civil proceeding allows the Crown to plead, and, in the event of a successful suit, the judge to award damages and remedies that are more applicable to the behavioural characteristics of the aggressor and the particular case at bar.

Of course, the defendant will have the right of reply or answer through a statement of defence and all other options available to defendants under the *Ontario Rules of Civil Practice* or the proposed Family Law Rules which would need to be amended to include such claims. Legal aid should be available for this defendant because the resources of the state are being mobilized against the defendant.

It is contemplated that as in the criminal prosecution of a domestic violence case, the Crown will take carriage of the civil domestic violence suit. The victim will remain involved and the Crown will consult the victim. The Crown remains fundamentally involved in a domestic violence civil claim, represents the Crown, and symbolizes the gravity of the claim and the public interest in such cases. The Crown will have a checklist of remedies that may

⁸¹This Crown authority to agree to a settlement on behalf of the victim will be in consultation with the victim, and will be final only upon approval of the Court. This victim settlement is akin to the approval of settlements with respect to minors, under Rule 7.08(1) of the Ontario Rules of Civil Procedure.

⁸²Barbara J. Hart, "Gentle Jeopardy: The Further Endangerment of Battered Women and Children in Custody Mediation," *Mediation Quarterly*, vo. 7, no. 4, Summer 1990.

be applied in any domestic violence civil action and will review and plead these remedies in cooperation with the victim. This will create a personalized and victim-centred civil litigation of the domestic violence claim.

To summarize then, the advantages of a civil suit by the Crown in domestic violence cases are many:

- The Crown, not the victim, brings forward the civil action. This protects victims who do not have the knowledge or ability to initiate a civil action against the aggressor.
- The state maintains its responsibility to protect the vulnerable and society. It supports the Government's contention that it will not tolerate domestic violence in Ontario especially in those cases which do not meet the dual threshold of criminal prosecution or that will likely result in acquittal.
- In the civil context, the trial of cases allows for the lower standard of proof, "a balance of probabilities", and, therefore, it is more likely that aggressors will be found civilly liable under this system
- The Crown will bring forward cases based upon the evidence of police, social workers, mental health professionals and others who have knowledge of the facts.
- The civil trial or process in domestic violence cases allows the Crown to request, and the family court judge to order, a number of civil remedies as each particular case requires.
- In short, the civil suit by the Crown is a far more flexible and rational system.

(ii) The Diversion Criteria

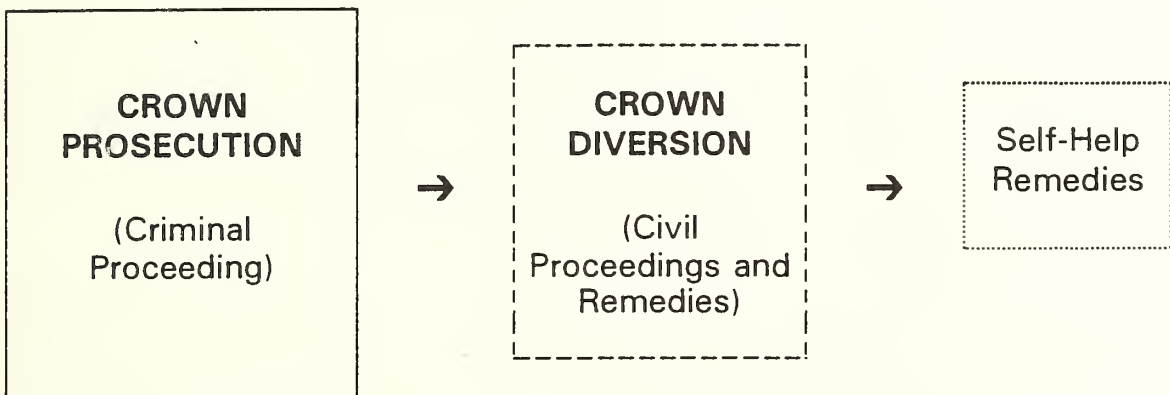
Which cases will be diverted from the criminal prosecution of domestic violence charges? The Crown alone should decide which cases should be diverted to the civil law process. Also, a procedure needs to be developed and regulated in the proposed draft rules of the family court as to how the cases will proceed and be defended in an expeditious way.

The criminal prosecution of domestic violence cases is the first preference. Cases that meet the criminal threshold should be vigorously prosecuted by the Crown in a criminal proceeding. It is submitted that all cases that do not meet the criminal threshold should be diverted, as soon as possible, to a civil proceeding. Thus, all cases that do not meet the two-part criminal threshold test are to be diverted, except where, at the time of

diversion:

- a) the complainant and the accused are living together and both agree in writing that the Crown should not proceed because both persons have reconciled their differences;⁸³ or
- b) the material facts upon which the complaint is based occurred more than two years ago.⁸⁴

The Processing of Domestic Violence Cases



In determining which domestic violence cases should be diverted to the civil proceedings, the Crown may not wish to work alone. It may be useful and feasible to have the community liaison committees⁸⁵ of the family law court to consider more specific criteria as to which cases should be diverted to the civil process. This committee would likely include the Crown attorney, a family court judge, and some community representation in each of the regional areas of the family court in Ontario.

(b) Systemic and Structural Issues: A Family Law Court for Ontario

A single family law court structure is contemplated for Ontario. The

⁸³The authors acknowledge the reality of the cyclical relationship in domestic violence cases. It is likely that the complainant and the accused/aggressor may resume living together after the initial charges have been laid or a civil suit has been commenced by the Crown. Notwithstanding this incidence, it is submitted that the choice of the victim must be respected and that it is not the province of the justice system to bar reconciliation among families in crisis.

⁸⁴ *R. v. Askov*, [1990] 2 S.C.R. 1199. This two-year limitation period is in accordance with the *Askov* decision and will spur the Crown to expedite domestic violence civil suits.

⁸⁵See s.21 - *Courts of Justice Act*.

option is to unify the family court system across Ontario and advocate a more consistent approach among the Crown and the judiciary. It is submitted that this judicial piece is integral to the coordinated and consistent approach to domestic violence in Ontario. The judges of the Provincial Division and the existing unified family court located in Hamilton, Kingston, Napanee, Orillia and London, may indeed be the gateway to solutions to domestic violence in Ontario. For example, they may refer aggressors who are found liable, to court-imposed counselling and they may grant injunctions excluding the aggressor, spouse or not, from the matrimonial home. In addition, this judiciary has a significant amount of experience dealing with complex family court issues including violent young offenders.

A comprehensive family law system should provide court connected non-adversarial dispute resolution,⁸⁶ assessment, counselling, education and related legal services. It also contemplates a sensitized judiciary and justice system personnel who will utilize multi-disciplinary solutions on a case-by-case basis. Doing so will improve coordination of the family court with other systems allied to health, education and community services.

As the Department of Justice has learned from its family violence project initiatives, "... given its multi-faceted nature, family violence demands a coordinated, multi-disciplinary response. The criminal justice system, on its own, cannot effectively deal with all the effects of family violence. This is now evident, and interagency cooperation still demands much attention."⁸⁷

(c) Civil Remedies Available to the Court - Civil Court Orders

(i) Injunction to Remove Aggressor from Matrimonial Home

In Ontario, the victims(s) of domestic violence have the option to apply for an injunction to remove the aggressor from the matrimonial home. The Governments of Prince Edward Island and Saskatchewan recently introduced the *Victims of Domestic Violence Acts* which among other remedies, allow for an application for a temporary and emergency removal of the perpetrator from the home, and is an important first step. However, there is a need to strengthen this option for victims of domestic violence so that the aggressor may be barred from the matrimonial home for a longer period of time,

⁸⁶ As stated above in this paper, domestic violence cases are not to be the subject of mediation or alternative dispute resolution.

⁸⁷ Department of Justice (Canada), Family Violence Initiatives, at 30 (supra).

indefinitely or permanently. In a coordinated way, police and child protection social workers should be able to protect the victims by enforcing the order and instructing the Crown attorney to bring the matter back to court for contempt proceedings and proper sanctions such as imprisonment, if necessary.

(ii) Supervised Access of Children

It may be ordered that supervised access should occur between the aggressor and the children. This option would protect the children from potential acts of the aggressor. This initiative should be coordinated with the Supervised Access Programs and the various Children's Aid Societies across Ontario.

(iii) Court-Imposed Assessment and Counselling of Aggressor Found Liable for Domestic Violence

There may be opportunities to establish a system to order, after a finding of liability, an assessment of the aggressor before ordering a civil remedy and counselling. For example, in the criminal system, pre-sentence reports are commonplace; similarly, in the child protection system, an assessment may be ordered once a child is found to be in need of protection and before a child care plan is approved by the family court. Early indications show that this solution can be effective. In one research study undertaken under the auspices of the federal government, there seemed to be a consistent reduction in the various forms of the violence when perpetrators were required to attend treatment programs. Indeed, referrals to assessment and counselling increased over the duration of the three-year project.⁸⁸

Court imposed assessment and counselling of the aggressor is administered currently on an ad hoc basis by Provincial Division judges (responsible for Criminal Law) in some domestic violence cases and in some jurisdictions across Ontario. There is a need to have a more uniform and systemic referral of perpetrators to counselling. The federally-funded domestic violence development projects recommended an "increase in criminal justice referrals by developing diversion approaches and educating criminal justice personnel in the dynamics of spousal abuse."⁸⁹ This recommendation should be applied to domestic violence in civil family law cases as well.

⁸⁸Department of Justice, Family Violence: Lessons Learned Through Project Development. Project Development and Discretionary Funds Section, July 1994 (revised March 1996).

⁸⁹*Ibid.*, at 43.

A family court judge could order referral from the justice system to a province-wide system of counselling. For example, l'Association des ressources intervenant auprès des hommes violent (ARIHV)⁹⁰ advocates both judicial and psycho-social interventions to hold aggressors accountable for their actions. The association holds that abusers have a direct responsibility to participate in interventions to reduce and prevent violence against women and children. This responsibility is fostered by judicial and social service referrals for aggressors to attend counselling and treatment programming.

A family court judge, therefore, could order an assessment similar to a criminal pre-sentence report which addresses abuser history and which may predict behaviour and prescribe counselling. This would afford a judge the unique ability to link all aspects of the wrongful behaviour which infuses domestic violence cases, and to grant by order, civil remedies which will bring a sense of justice to the victim and restore personal liberty.

(iv) Action to Sue for Damages in Tort

The caselaw suggests that a victim of domestic violence has grounds to sue for damages in tort. In common law jurisprudence, a victim may sue in the civil courts for conduct which amounts to the tort of battery or assault. The victim may sue for damages on facts proved on the balance of probabilities. Further, a civil action does not preclude a criminal assault prosecution and vice versa. In theory, victims of civil batteries and criminal assaults may sue for tort compensation, but these actions are rarely successful in practice.⁹¹ There is also a significant question as to whether a woman battered by her partner or spouse will sue, and if so, will those who qualify for legal aid and/or retain counsel. A solution would be for the Crown attorney to seek in family court damages on behalf of the victim for physical and emotional injury.

(v) Monies Payable Into Court and Enforcement

A family court judge may order that any monies awarded as damages in a domestic violence civil claim be paid into court to the credit of the victim, and not directly to the victim. This is mandatory for children.⁹² This option may ensure aggressor compliance with the court order. Similarly, victims may

⁹⁰*Ibid.*, at 46.

⁹¹Allen M. Linden, Canadian Tort Law, 4th Edition, (Toronto: Butterworths), 1988, at 46.

⁹² See Rule 7.09 and Rule 72.02 of the Consolidated Rules of Practice.

feel less intimidated if they perceive that the monies are to be paid to them through the Court, rather than directly from the aggressor. Also it may serve to sever the relationship and end the cyclical nature of the domestic violence. Further, costs may also be ordered to be paid to the recently created Justice for Victims Fund (*Victim Bill of Rights*).

However, it should be noted that forced payment of monies may serve to escalate the crises in the family. There may be a significant amount of resentment on the part of the aggressor who is ordered to pay monies to his family, or to the court because of conflict in his family.

Further, there must be an enforcement mechanism in place to ensure compliance of the payor/aggressor. The Family Responsibility Office of the Ministry of the Attorney General has special tools at its disposal and could be utilized to enforce payment of the damages.

(vi) Monies Payable Out of Court

A family court judge may order that the Children's Lawyer review any payment out of court for the benefit of the children⁹³ and the victim. The benefit, for example, may be for psychiatric treatment or physiotherapy or other extraordinary expenses related to the domestic violence and consequent well-being of the victims.

⁹³See Rule 72.03(10) of the Consolidated Rules of Practice.

IV. IMPLICATIONS

There are, of course, many implications to the recommendations we are making:

- There are fiscal issues. Will this holistic service delivery mean new monies? Will it require a short-term or long-term financial and structural investment by the Government of Ontario to establish? Is there a possibility of shared-cost programming with the federal government, particularly in light of the fact that this holistic service delivery contemplates a family court for Ontario?
- There may be a perception among certain stakeholder groups that this proposal is paternalistic in that it takes the right away from the victims (predominantly women) to advance the legal claims and receive benefits in their own name.
- The federal government piece; there is a "need for the federal government to better articulate principles for supporting families and children, and to better coordinate programs and policies" to support provincial implementation of family law policies across Canada.⁹⁴
- General public perception: Is domestic violence no longer a crime? It must be clearly understood that this holistic service delivery regards the diversion to the family law justice system of domestic violence cases which do not meet the criminal threshold. We are of the view that the aggressor will be dealt with just as harshly and, we venture, more consistently with the nature and symptomology of domestic violence.
- Operational Considerations for the Justice System:

Prevention: What aspects of the legal problem can be met through clearer or reformed laws, a more responsive private ordering, education and social interventions?

Devolution: What is the law to do about problems that cannot be prevented? Are these problems better dealt with by moving resources or responsibilities elsewhere?

⁹⁴Nicholas Bala. Legal Principles for Families, Children and Youth: A Discussion Paper, (Discussion Paper prepared for the Department of Justice Canada), October 5, 1995, at 59.

Apportionment of Legal Responses: What is the "right mix" or "fit" among criminal, civil and administrative legal responses in a holistic judicial system? How do we achieve a "holistic" justice system?

Cohesiveness: Is there a need for strengthened and rationalized community and social resources and supports? Can there be greater harmonization across jurisdictions on fiscal and substantive legal matters?

Complexity: Where the legal problem is complex affecting many parts of the justice system, how can linkages be made to improve service and/or reduce transaction costs?

Equality: What legal, procedural and practice changes must be made to reflect the diverse experiences and needs of the population facing family and related problems? What safeguards are needed to protect security, liberty and equality interests?

V. PROCESSES

- There must be discussions between the relevant policy and operational divisions, branches and offices of the Ministry of the Attorney General, particularly, the Criminal Law Division and the Social Justice Services Division.
- The Ministry of the Attorney General needs to establish and coordinate with the Ministry of the Solicitor General and Correctional Services, the Ministry of Community and Social Services, The Ontario Women's Directorate and the Ontario Court of Justice; an interministerial committee on domestic violence issues is needed to raise issues, identify the concerns of different ministries, and establish policies that address domestic violence in Ontario.
- What is to be the federal government component?
- It is also recommended that a coordinated public education campaign in partnership with important stakeholders be initiated to educate the public and the professions about this new "holistic" and integrated initiative.
- It is important that the domestic violence legal system reform be integrated and coordinated with the other ongoing civil justice initiatives and reviews in Ontario.
- It is recommended that the input of some external stakeholders such as women's groups and the Association of Children's Aid Societies of Ontario, be integrated into the legal reform process. However, Professor Bala cautions that "if governments expect [study working groups] to produce results that can be implemented, care must be taken to have discussion and legislative recommendations in this area produced by bodies that have "gender credibility."⁹⁵

⁹⁵Nicholas Bala, *Ibid.*, at 41-42.

VI. CONCLUSION

The Ministry of the Attorney General for Ontario has made important first steps in addressing domestic violence in Ontario. What is now needed is an holistic, integrated approach that incorporates the police services, the children's aid authorities, communities, the Crown Attorneys, the Children's Lawyer and the courts. There is also the need to further train the judiciary and the Crown Attorneys in the various remedies to domestic violence.

The solution to the social problem of domestic violence cannot be found wholly in the criminal prosecution of domestic violence cases. The justice system must respond to the many symptoms of domestic violence evident in each and every domestic violence case. We recommended a unified family court for Ontario and the civil suit by Crown Attorneys of domestic violence cases that do not meet the criminal proof threshold. This, in our view, should be as the cornerstone of an effective domestic violence strategy.

Domestic violence by its very nature cannot be addressed solely through the prosecution of those cases that meet the criminal threshold. There is a need for a varied and sensitive application of civil remedies to hold the aggressor liable and, if possible, repair the family. Above all, the personal liberty of victims to be free of violence, must be addressed by the Crown. Children are the most vulnerable victims of domestic abuse. It is imperative that they be protected and that they be given an opportunity to mature so that they do not become abusers or victims in the cycle of abuse. There is hope. Studies have concluded that:

"...it appears plausible that children can recover from the impact of parental conflict and separation, provided that the violence is eliminated and proper supports and opportunities for recovery are provided."⁹⁶

⁹⁶Wolfe, D.A., Zak, L., Wilson S. Jaffe, P. "Child Witnesses to Violence Between Parents: Critical Issues in Behavioural and Social Adjustment." 14(1) Journal of Abnormal Psychology 95.

APPENDIX A: CURRENT RESPONSES TO DOMESTIC VIOLENCE IN ONTARIO

There are a number of civil justice initiatives currently underway in the Province. The four initiatives listed below directly or indirectly address the issue of domestic violence in Ontario:

(1) The Civil Justice Review

In 1994, the Ministry of the Attorney General and the Ontario Court of Justice (General Division) undertook a massive civil justice review. Some of the recommendations of the final report of the Civil Justice Review (November 1996) include: a mandatory referral to mediation of civil (non-family) cases; civil case management; streamlining of business practices and a clarification of responsibility and accountability management of the justice system through the creation of a Court Services Agency. One of the major recommendations of the Civil Justice Review was that the Ministry of the Attorney General undertake a family justice review. The Ministry is now underway with Family Law Justice Strategy planning.

(2) Pilot Projects: Specialized Domestic Violence Courts

There is a joint Ministry of the Attorney General and Ontario Court of Justice (Provincial Division) initiative to establish special courts to deal with domestic assault cases. For example, a domestic violence court has been established in Stratford, Ontario. Further, in November 1996, two domestic assault pilot projects in Toronto (Old City Hall) and North York introduced specialized domestic assault courts as well. On July 2, 1997, the Attorney General Charles Harnick announced six additional specialized courts to combat domestic violence as part of their "Agenda for Action."

The six courts (in North Bay, Brampton, Oshawa, Ottawa, London, and Hamilton) will be expanded to help "combat violence against women and ensure that men who abuse their spouses are held accountable for their crimes." These new courts are an expansion of the North York and Old City Hall pilot projects to the six new locations across Ontario. The Attorney General intends to spend \$5.2 million over four years on domestic violence criminal justice reform. The courts are intended to improve prosecution of domestic violence cases through hard evidence while providing more support to the victims of domestic violence, particularly women and children.

There is also a domestic violence initiative in Perth County. Through

leadership of the Crown Attorney's Office, and with the cooperation of the police department, representatives from Optimism Place, the Children's Aid Society and Family Services Perth-Huron, Perth County has developed a domestic violence case initiative. The group meets once a month to track cases as they are processed through the court system. A mechanism has been developed to ensure that best evidence is brought before the courts. They also developed a process to obtain sworn statements at the scene of the crime. As a result of these initiatives and cooperation from the judiciary who ensure that these Perth County cases are heard within three months, the prosecution success rate is in excess of 80%, probably the best in the province.⁹⁷

(3) Community Victims' Initiatives Program (CVIP)

This program is a joint initiative of the Ministry of the Solicitor General and Correctional Services and the Ministry of the Attorney General. CVIP programs are intended to implement principles of the Victims' Bill of Rights. Project HOW in Guelph is one of seventeen such programs. Project HOW will train neighbourhood groups to develop community support systems and provide one-on-one support to victims. The project also includes public education events on violence prevention such as conflict resolution techniques and integrated holistic responses to violence.

Another CVIP program is the Victim Support Line (VSL). This is a toll free line intended to assist victims of crime with general information about the justice system and provide referrals to community services. Funding for CVIP projects is generated from surcharges on court fines.

(4) Family Violence Initiatives (Department of Justice - Canada)

The federal Department of Justice has funded forty-eight family violence projects at the cost of \$7.1 million over four years (1991-95). These projects support criminal law reform, research, and project development dealing with family violence and child sexual abuse. Most of these projects funded across Canada have education as their main goal. The report about Family Violence Initiatives has developed seven priorities:⁹⁸

1. Sensitize justice personnel to family violence and multi-disciplinary solutions
2. Family violence is a criminal act to be condemned

⁹⁷Adapted from a statement by The Honourable Charles Harnick (Attorney General for Ontario) in response to a question by Mr. Bert Johnson (Perth) in the Ontario Legislature. *Hansard Reporting Service*. L-1420. May 6, 1997.

⁹⁸Department of Justice (Canada). Family Violence: Lessons Learned Through Project Development. (Project Development and Discretionary Funds Section). July 1994.

3. Improve coordination of the justice system with other systems
4. Improve charging discussion and the prosecution of sexual offences
5. Testifying in court
6. Treatment programs for men who batter
7. Encourage holistic dispute resolution techniques.

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